

General Purchasing Terms and Conditions for the Purchase of Food and Food Packaging

Freiberger Lebensmittel GmbH & Co. KG, Berlin, Germany

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1. Scope of Application

- 1.1** These General Purchasing Terms and Conditions shall apply to any and all purchase orders and contracts of Freiberger GmbH & Co. KG with regard to the purchase of food and food packaging. "Food" shall be any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans (definition from Article 2 EU VO EEC 178/2002).
- 1.2** General standard terms and conditions on the part of the manufacturer/supplier (hereinafter referred to as the Supplier) shall not apply unless we have declared agreement with their validity in writing. Insofar as the Supplier acknowledges the General Purchasing Terms and Conditions upon their presentation, then they shall also apply to future contracts with the Supplier.
- 1.3** Any acceptance of deliveries as well as their payment shall not be equivalent to agreement with the Supplier's general standard terms and conditions.

2. Conclusion of Contract, Modifications and Amendments

Conclusion of effective contracts with the Supplier may be effected through quantity contracts, time-based contracts, individual contracts as well as via mutual declarations. The respective declarations must be specified or confirmed in writing. This shall also apply to modifications or amendments of existing contracts.

3. Terms of Delivery, Forwarding Instructions, Origin of Goods

- 3.1** Deliveries must conform to the contracts concluded with regard to their quality, scope and classification as well as take place within the prescribed period and deadline.
- 3.2** For the terms of delivery "DDP ... (designated place of destination)," Incoterms® 2010, shall apply insofar as no other terms and conditions have been agreed in the respective individual contract.
- 3.3** The Supplier shall be required to submit certificates of origin with regard the origin of the goods or provide the same with a movement certificate if such are subject to a preferential agreement and autonomous preferential measures take place. If import of the goods depends on registration, then the Supplier shall provide for the necessary prerequisites and measures.

4. Prices, Packaging, Shipment

- 4.1** Agreed prices shall be fixed prices and shall exclude any subsequent claims made by the Supplier. The costs of packaging and transport up to the place of destination shall be included in the respective prices.
- 4.2** Only environmentally-friendly packaging materials may be used.
- 4.3** The goods shall be handled in such a way that damage or spoilage during transport is avoided. Regulations under public law or individually agreed arrangements with regard to shipment, e.g. for the transport of frozen goods, shall be observed.
- 4.4** If goods to be supplied must be marked or packaged in accordance with special national or international shipping instructions, then the Supplier shall also provide for this without an express request.
- 4.5** The purchase order numbers, the respectively designated recipients as well as the correct receiving location for the goods communicated to the Supplier shall be indicated on all shipping documents.

5. Partial, Excess or Short Delivery

- 5.1** Partial deliveries shall require our prior written approval. In such cases the outstanding remaining quantity shall be specified on the delivery slip. Even if we accept partial deliveries without prior approval, this shall neither constitute accelerated maturity of payment obligations nor agreement with regard to the assumption of additional transport costs.
- 5.2** We reserve the right to accept excess or short deliveries in individual cases. If excess deliveries are made without our prior approval, then we shall be entitled to refuse acceptance of the entire delivery. Insofar as separation of the quantities by us is unreasonable or practically impossible, then we shall be entitled to store excess deliveries at the Supplier's expense or return the same to the Supplier at the latter's risk and expense.

6. Deadlines, Dates

- 6.1** Compliance with agreed dates and deadlines shall be determined by the receipt of non-defective goods at the place of destination.
- 6.2** The Supplier shall be obliged to immediately notify us as soon as it becomes clear that the agreed dates and/or deadlines cannot be met on time either in part or as a whole, while indicating both the reasons and the prospective duration of the delay. Corresponding notifications shall not affect the rights and claims to which we are entitled in the event of default.

7. Obligations to Perform, Quality Matters, Monitoring and Due Diligence Requirements for Food

- 7.1** The Supplier of food shall be obliged to deliver the goods in accordance with the samples, raw material specifications or other specifications that form the basis of the contract.
- 7.2** In order to provide for perfect quality the relevant requirements laid down in the food law at the place of delivery must be complied with in the case of food. The Supplier shall provide us with verification of such monitoring for compliance with these requirements on request.
- 7.3** On request we shall be provided with documentation of ongoing monitoring of the Supplier's production and inspection of the produced goods through the Supplier's own laboratories and/or sworn testing chemists for food chemistry within the scope of the due diligence required by food law. The Supplier shall store such documentation for at least 10 years as of delivery of the corresponding goods.
- 7.4** After prior notification the Supplier shall grant us the right to check observance of the requirements laid down in the food law at the Supplier's premises during normal business hours and to refuse acceptance of deliveries insofar as defects in quality are determined.
- 7.5** The Supplier shall ensure that supplied goods are traceable up to their origin within 48 hours so that required measures may be taken in justified cases, in particular in the case of danger to life and limb posed by the goods. In selecting its upstream suppliers the Supplier shall in turn also ensure that the respective goods can be traced.
- 7.6** When submitting offers the Supplier shall be obliged to notify us if the Supplier offers goods that the Supplier produces in a country other than that of the Supplier's place of business or which the Supplier purchases from another country. The purchase of goods from a country other than the country of origin must be approved by Freiburger in advance.

8. Duty to Inspect and Report Complaints

Within the scope of the obligations in accordance with Section 377 of the German Commercial Code [HGB] we shall have the right to inspect the goods for visible defects within a period of seven days of delivery using methods customary to the industry. We shall report any such detected or other latent defects within two working days after their discovery. The values determined by us during inspection of incoming goods shall be determining in cases of doubt with regard to the number of items or weights.

9. Delivery Quality, Rights in the Case of Defect

- 9.1** The Supplier shall be obliged to provide non-defective deliveries.
- 9.2** The Supplier shall in particular be obliged to observe any special safety and hygiene regulations that are valid at the place of destination and made known to the Supplier.
- 9.3** Insofar as the EU "REACH Regulation" applies to the goods or parts thereof, then the respective substances must be pre-registered or approved. Any other requirements arising out of the REACH Regulation shall also be fulfilled by the Supplier.
- 9.4** Limitations or exclusions of liability by the Supplier shall not be acknowledged. We shall be entitled to statutory rights in the case of defect and in the case of warranty. If individual warranty claims, e.g. based on an assumed warranty of durability, go beyond statutory rights in the case of defect, then they shall remain unaffected.
- 9.5** A period of 36 months which begins with arrival of the goods at the place of destination shall apply to any and all claims based on defects that are subject to the statute of limitations. Longer statutory periods of limitation for limitation of claims based on defects and the term of the statutory period of limitation for warranties shall remain unaffected.
- 9.6** If a defect shows up within the period of limitation, then we shall have the option of demanding subsequent performance by means of reworking, subsequent delivery and/or new production within an appropriate period.
- 9.7** If subsequent performance is not effected by the Supplier within the specified appropriate extension of time, has failed or if setting of the extension of time proves to be superfluous, then we shall be entitled to withdraw from the contract in accordance with statutory provisions and demand

- payment of damages instead of performance, replacement of futile expenditures or reduction of purchase price.
- 9.8** In urgent cases, if the Supplier is unavailable or where there is the danger of a disproportionately high amount of damage, we shall have the right to provide for subsequent performance ourselves or to have such provided by third parties at the Supplier's risk and expense. We shall immediately inform the Supplier of such measures.
- 10. Bearing of Risk, Force Majeure**
- 10.1** The Supplier shall bear the risk of accidental perishing and deterioration up to arrival of the goods at the place of destination.
- 10.2** In cases of force majeure, measures involving labor disputes as well as other external circumstances that are unforeseeable or uncontrollable by us shall entitle us to accordingly postpone acceptance of the goods as long as the hindrance persists.
- 10.3** In all other respects we shall be obliged to only accept deliveries if the latter exhibit the agreed specification characteristics or other guaranteed characteristics.
- 11. Invoices, Payment**
- 11.1** Auditable invoices shall be submitted in duplicate following complete delivery free of defects and submission of documents for each purchase order while indicating the respective purchase order data along with the mandatory information required in accordance with valid law. Invoices may be rejected insofar as they are not auditable.
- 11.2** In the absence of any other written agreement payment shall be made within 14 days with a 3% discount or net within 30 days. The payment and discount period shall commence with receipt of the invoice, however not before complete performance of the contract without defect. Payment shall be regarded as on time if we instruct the bank to make payment on the last day of the period for payment.
- 12. Industrial Property Rights of Third Parties, Ownership**
- 12.1** The Supplier shall make certain that we will not violate the industrial property rights of third parties through the contractual use and/or sale of the goods, in particular formulations. The Supplier shall indemnify us against any and all claims asserted against us due to violation of an industrial property right and be responsible for the costs of safeguarding our rights if such claims are based on culpable violation of duty by the Supplier. We shall inform the Supplier immediately in the event of a claim.
- 12.2** We shall contradict any provisions for the retention of title on the part of the Supplier insofar as they go beyond simple retention of title. In individual cases they shall require prior written agreement. Should subcontractors nevertheless assert proprietary rights, co-ownership rights or rights of lien and/or have compulsory execution measures carried out against us, then we in turn shall assert claims against the Supplier for any and all damage incurred as a result.
- 13. Product Liability, Insurance**
- 13.1** The Supplier's non-contractual product liability shall be based on statutory provisions. The Supplier shall be obliged to indemnify us against any and all claims based on product liability if such claims are due to a defect in the goods delivered by the Supplier, whose cause lies in the Supplier's domain or sphere of control or organization and the Supplier itself is liable vis-à-vis third parties. Under the same conditions the Supplier shall also be responsible for any damage incurred by us due to appropriate and necessary precautionary measures, e.g. through public warnings or recalls in accordance with their nature and scope. Our right to assert our own damage claim(s) against the Supplier shall remain unaffected.
- 13.2** The Supplier shall be obliged to take out an appropriate amount of insurance against corresponding risks, to maintain insurance coverage at least for the term of the business relationship with Freiburger and verify such to us on request through submission of the Supplier's insurance policy.
- 14. Secrecy, Data Protection**
- 14.1** Any documents and samples which we provide to the Supplier shall be treated by the Supplier in a confidential manner and may not be made accessible to third parties or used otherwise without prior written approval. We reserve the right to reclaim these documents at any time in the event that the Supplier violates such obligations or current contracts have been completed. We shall reserve the right to withdraw from current contracts for good cause in the case of violation as well as the right to register a complaint for the institution of criminal prosecution measures.

- 14.2** The Supplier shall be obliged to maintain secrecy and to correspondingly oblige any staff or other vicarious agents with regard to any operational data and information, including with regard to our customers, which the Supplier has become aware of in connection with the business relationship. Any information that is generally accessible to the public shall be excluded.
- 14.3** For contractual purposes we shall be entitled to store and process any and all data, in particular also personal data, made available to us by the Supplier in connection with the conclusion of contracts.
- 15. References/Advertisement**
The Supplier shall not be authorized to use information with regard to an intended or existing contractual cooperation with us for reference or marketing purposes without our written approval. Photographs taken on our properties or business premises as well as the use and/or publication of images and data of any kind shall be prohibited without our written approval.
- 16. Passing on Orders, Assignment, Setoff**
- 16.1** The Supplier may permit the execution of accepted production and delivery obligations or essential parts thereof to be carried out by third parties only after obtaining our prior written approval.
- 16.2** The Supplier may assign claims against us to third parties or have such collected by third parties only after prior written approval unless the claims involved are undisputed, acknowledged by us or recognized by declaratory judgment.
- 17. Code of Conduct**
Freiberger observes internationally recognized environmental, labor and social standards. We have described and regulated such in a Code of Conduct:
<http://www.freiberger.de/freiberger/de/unternehmen/downloads.html>. We require that the Supplier likewise acknowledges and complies with this Code of Conduct.
- 18. Place of Performance, Applicable Law, Place of Jurisdiction**
- 18.1** The place of performance for deliveries shall be the respective place of destination.
- 18.2** German law shall apply. Application of the United Nations (Vienna) Convention on Contracts for the International Sale of Goods (CISG) from April 11, 1980 shall be excluded.
- 18.3** Place of jurisdiction shall be the competent court for our place of business. We shall also have the option of bringing action against the Supplier at the latter's general place of jurisdiction.
