General Terms and Conditions of Purchase for the purchase of food and food packaging

Freiberger Lebensmittel GmbH, Berlin

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1. Scope

1.1 These General Terms and Conditions of Purchase apply to all orders and contracts of Freiberger Lebensmittel GmbH for the purchase of food and food packaging (hereinafter also referred to as **"Goods"**). These General Terms and Conditions of Purchase shall only apply if the Seller is an entrepreneur (Section 14 of the German Civil Code), a legal entity under public law or a special fund under public law (hereinafter referred to as **"Supplier"**). The term "Food" means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans (as defined by Article 2 of Regulation (EC) 178/2002).

1.2 These General Terms and Conditions of Purchase shall apply exclusively. General terms and conditions of sale, delivery or other terms and conditions of the Supplier shall not apply unless we have expressly agreed to their application on an individual basis. These General Terms and Conditions of Purchase shall also apply to all future orders and contracts, even if we do not then refer to them separately.

1.3 The reference to a letter, an e-mail or other declarations of the Supplier which contain or refer to deviating, conflicting or supplementary terms and conditions or the unconditional acceptance of deliveries as well as their payment does not imply any consent to the general terms and conditions of sale, delivery or other terms and conditions of the Supplier and in these cases the exclusive application of these General Terms and Conditions of Purchase shall apply.

2. Conclusion of contract, amendments and supplements

Effective contracts with the Supplier can be concluded by means of quantity contracts, time agreements, individual agreements and mutual declarations. The relevant declarations shall be set out or confirmed in writing. This also applies to amendments or additions to existing contracts.

3. Deliveries, delivery conditions, origin of Goods, procurement risk

3.1 Deliveries shall correspond to the agreements made in terms of performance, scope and scheduling, and must be made on time and within the agreed deadlines.

3.2 The delivery conditions shall be "DDP... (named place of destination)", Incoterms® 2020, unless other terms are agreed in individual contracts.

3.3 The Supplier shall provide a certificate of origin on the origin of the Goods or provide them with a movement certificate if they are covered by a preferential agreement and autonomous preferential measures are taken. Insofar as an import of the Goods depends on declarations, the Supplier must take the necessary preconditions and measures.

3.4 The Supplier bears the procurement risk with regard to self-supply by its suppliers.

4. Prices, packaging, shipping

4.1 Agreed prices are fixed prices and exclude subsequent claims by the Supplier. The costs of packaging and transport to the place of destination are included in the prices.

4.2 Only environmentally friendly packaging materials may be used for packaging.

4.3 The Goods must be transported in such a way as to avoid damage or spoilage in transit. Public law regulations or individual agreements on shipping, e.g. for the transport of deep-frozen Goods, must be complied with.

4.4 If Goods to be delivered must be marked or packaged in accordance with special national or international shipping regulations, the Supplier must do this even without an express request.

4.5 In the case of the supply of packaging, the Supplier also warrants that the packaging is suitable for contact with Food and that such contact will not have any negative effects on the Food. In particular, the packaging shall comply with all the requirements of Regulation (EC) 1935/2004 and the specific measures adopted pursuant thereto.

4.6 Order numbers communicated to the Supplier, the designated recipients and the correct place of receipt of the goods shall be stated in all shipping documents.

5. Partial, exceeding or insufficient delivery

5.1 Partial deliveries require our prior written consent. In such cases, the outstanding remaining quantity must be listed on the delivery note. If we accept partial deliveries without prior consent, this shall not constitute an anticipated due date of payment obligations or consent to the assumption of additional transport costs.

5.2 We reserve the right to acknowledge exceeding or insufficient deliveries in individual cases. If exceeding deliveries are made without our prior written consent, we shall be entitled to refuse acceptance of the complete delivery. Insofar as a separation of quantities is not reasonable for us or is not practically possible, we are entitled to store exceeding deliveries at the Supplier's expense or to return them to the latter at its expense and risk.

6. Times, deadlines, delay in delivery

6.1 The delivery time stated by us in the order is binding.

6.2 The receipt of the conforming Goods at the place of destination shall be essential for compliance with agreed times and deadlines.

6.3 As soon as the Supplier realises that it will not be able to meet agreed times and deadlines in full or in part, it must inform us, stating the reasons and the expected duration of the delay. Corresponding notifications shall not affect the rights and claims to which we are entitled in the event of default.

6.4 If the Supplier is in default, we may – in addition to further statutory claims – demand lump-sum compensation for our default damages in the amount of 1% of the net price per completed calendar week, but in total not more than 5% of the net price of the Goods delivered late. We reserve the right to prove that higher damages have been incurred. The Supplier reserves the right to prove that no damage at all or only significantly less damage has been incurred.

7. Performance obligations, quality issues, control and due diligence obligations for Food

7.1 The Food Supplier shall deliver the Goods in accordance with the samples, raw material specifications or other specifications on which the agreement is based. The Food Supplier shall comply with the relevant national and European legal provisions (in particular concerning Food and consumer goods). This obligation also extends to secondary legislation such as guidelines and directives which reflect the prevailing view of the market.

7.2 To maintain perfect quality, the Food must comply with the relevant Food law regulations at the place of manufacture and at the place of delivery. Upon request, the Supplier shall provide us with evidence of its monitoring on compliance with these regulations.

7.3 On request, we shall be provided with documentation on the ongoing monitoring of the Supplier's production and inspection of the produced Goods by our own laboratories and/or sworn commercial chemists as part of our duty of care under Food law. Such documentation must be kept by the Supplier for at least 10 years from delivery of the Goods in question.

7.4 The Supplier accepts that we have the right, after prior notification, to check compliance with Food regulations at its premises during normal business hours and to refuse acceptance of deliveries insofar as quality defects are discovered in the process.

7.5 The Supplier shall ensure the traceability of delivered Goods back to their origin within 48 hours so that necessary measures can be taken in justified cases, in particular if the Goods are found out to be harmful to life and health. When selecting its sub-suppliers, the Supplier shall ensure that they also guarantee the traceability of the Goods.

7.6 The Supplier must inform us when submitting the offer if it offers goods produced by it in a country other than that of its place of business or obtained by it from another country. The purchase of Goods from a country other than the country of origin must be approved by us in advance.

8. Duty of inspection and complaint

The statutory provisions (Articles 377, 381 German Commercial Code, HGB) shall apply to the commercial obligation to examine the Goods and to give notice of defects with the following proviso: Our obligation to inspect shall be limited to defects which become apparent during our incoming Goods inspection under external examination including the delivery papers (e.g. transport damage, wrong and insufficient delivery) or which are recognisable during our quality control in the random sampling procedure. Moreover, it depends on the extent to which an investigation is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered at a later time remains unaffected. Notwithstanding our duty to inspect, our notice of defects shall be deemed to have been given without undue delay and in good time if it is sent within three working days of discovery or, in the case of apparent defects, of delivery.

9. Quality of deliveries, rights in the event of defects

9.1 The Supplier shall provide conforming deliveries.

9.2 The Supplier shall in particular comply with the special safety and hygiene regulations applicable at the place of destination of which it has been made aware.

9.3 Insofar as the EU "REACH Regulation" applies to Goods or components of Goods, the relevant substances must be registered or authorised in advance. The Supplier shall also comply with any other requirements under said regulation.

9.4 Limitations or exclusions of liability by the Supplier are not accepted. In the event of defects and in the event of a warranty claim, we shall be entitled to the statutory rights concerning defects. Insofar as individual warranty claims, e.g. based on an assumed warranty on durability, go beyond the statutory rights concerning defects, the latter shall remain unaffected.

9.5 A period of 36 months shall apply in each case to claims for defects subject to the statute of limitations, beginning with the delivery of the Goods at the place of destination. Longer statutory limitation periods for the limitation of claims for defects as well as the running of the statutory limitation period for warranties shall remain unaffected.

9.6 If a defect becomes apparent within the limitation period, we shall be entitled, at our discretion, to demand subsequent performance by cure, subsequent delivery or the production of the good *ex novo* within a reasonable period.

9.7 If the Supplier does not provide the subsequent performance within a reasonable period of grace set, if such performance has failed or if it was not necessary to set a deadline, we may withdraw from the agreement in accordance with the statutory provisions and demand compensation for damages and reimbursement of futile expenses or a reduction in price.

9.8 In urgent cases, if the Supplier could not be reached and there is a risk of disproportionately high damages, we shall have the right to carry out the subsequent performance at the expense and risk of the Supplier or to have it carried out by third parties. We shall inform the Supplier of such measures without delay.

10. Supplier recourse

10.1 In addition to the claims for defects, we shall be entitled without restrictions to the statutory recourse claims within a supply chain (Supplier recourse pursuant to Articles 445a, 445b, 478 of the German Civil Code, BGB). In particular, we shall be entitled to demand from the Supplier exactly the type of subsequent performance (cure or replacement delivery) that we owe our customer in the individual case. Our statutory right of choice (Section 439 para. 1 BGB) remains unaffected.

10.2 Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses in accordance with Articles 445a para. 1, 439 paras. 2 and 3 BGB), we shall notify the Supplier and request a written statement, briefly setting out the facts of the case. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is brought about, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the Supplier shall be responsible for providing evidence to the contrary.

10.3 Our claims from Supplier recourse shall also apply if the defective Goods have been further processed by us or another entrepreneur.

11. Risk assumption, force majeure

11.1 The Supplier shall bear the risk of accidental loss and accidental deterioration of the Goods until they are delivered at the place of destination.

11.2 In cases of force majeure, labour disputes and other unforeseeable circumstances beyond our control, we shall be entitled to postpone acceptance of the Goods for as long as the hindrance persists.

11.3 Furthermore, we are under an obligation to accept deliveries only if they have the agreed specification features or other guaranteed features.

12. Invoice, payment, rights of set-off and retention

12.1 Invoices must be submitted in duplicate in an auditable form after complete delivery of conforming Goods and submission of documents for each order, stating the order data with the mandatory information required by applicable law. To the extent that they are not auditable, invoices may be rejected.

12.2 Unless otherwise agreed in writing, payments shall be made within 14 days with a 3% discount or within 30 days in full. The payment and discount period runs from receipt of the invoice, but not before the agreement has been fulfilled without defects. Payment shall be deemed to have been made when we have instructed the bank to make the payment on the last day of the period.

12.3 We do not owe any maturity interest. The statutory provisions shall apply to default in payment.

12.4 We shall be entitled to rights of set-off and retention as well as the defence of non-performance of the agreement to the extent provided by law. In particular, we are entitled to withhold due payments as long as we are still entitled to claims from incomplete or defective services against the Supplier. The Supplier shall have a right of set-off or retention only in respect of counterclaims which have been established by judgement or are undisputed.

13. Property rights of third parties, ownership

13.1 The Supplier shall ensure that we do not infringe the industrial property rights of third parties, in particular recipes, through the contractual use or sale of the Goods. It shall indemnify us against all claims made against us for infringement of an industrial property right and it shall bear the costs of defending the rights if the claims are based on a culpable breach of duty on its part. We will inform it immediately in the event of a claim.

13.2 We do not accept any provisions on retention of title of the Supplier that exceed the simple retention of title. They require a prior written consent on a case by case cases. Should nevertheless any sub-suppliers assert ownership rights, co-ownership rights or rights of lien against us or have compulsory enforcement measures applied against us, we will make a claim against the Supplier for all ensuing damages.

14. Product and manufacturer's liability, insurance

14.1 The non-contractual product and manufacturer's liability of the Supplier shall be governed by the statutory provisions. The Supplier shall indemnify us against all claims arising from product and manufacturer's liability if they are attributable to a defect in the Goods supplied by it, whose cause falls within its sphere of control or organisation and the Supplier itself is liable in relation to third parties. Under the same conditions, it shall also be liable for damages which we incur in such cases due to the nature and extent of reasonable and necessary precautionary measures, e.g. public warnings or recalls. Our right to claim our own damages against the Supplier remains unaffected.

14.2 Within the scope of its indemnification obligation, the Supplier shall reimburse expenses pursuant to Articles 683, 670 BGB arising from or in connection with a third party claim, including recall actions carried out by us. We will inform the Supplier - as far as possible and reasonable - about the content and scope of recall measures and give it the opportunity to comment. Further legal claims remain unaffected.

14.3 The Supplier undertakes to take out insurance against appropriate risks to a reasonable amount, to maintain the insurance cover at least for the term of the business relationship with us and to prove it to us on request by submitting its insurance policy.

15. Confidentiality

15.1 Documents and samples made available to the Supplier by us are to be treated confidentially and may not be made available to third parties or otherwise used without prior written consent. We reserve the right to demand the return of these documents at any time if the Supplier breaches such obligations or if current contracts have been settled. We reserve the right to terminate current contracts for good cause in the event of a breach, as well as the right to file criminal charges to initiate criminal prosecution measures.

15.2 The Supplier shall maintain confidentiality about all operational data and information of which it becomes aware in connection with the business relationship, also about our customers, and to have its employees and other vicarious agents undertake the same obligation. This does not apply to data that is generally accessible to the public.

16. References, Advertising

The Supplier is not entitled to use information about an intended or existing contractual cooperation with us for reference or marketing purposes without our written consent. Photography on our properties and premises as well as the use or publication of images and data of any kind is prohibited without our written consent.

17. Passing on of orders, assignment

17.1 The Supplier may only entrust the performance of assumed manufacturing and delivery obligations or a significant part thereof to third parties with our prior written consent.

17.2 The Supplier may only assign claims against us to third parties or have them collected by third parties with our prior written consent, unless the claims are finally established, acknowledged or undisputed.

18. Code of Conduct

We observe internationally recognised environmental, labour and social standards. As a Südzucker Group company, we are governed by the Südzucker Group code of conduct, which is available at Südzucker Group: Code of Conduct language versions | Südzucker Group for download. We also require the Supplier to acknowledge and comply with the rules of conduct described therein.

19. Place of performance, applicable law, place of jurisdiction

19.1 The place of performance for deliveries is the relevant place of destination.

19.2 German law shall apply. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (UN Sales Convention; CISG) is excluded.

19.3 The place of jurisdiction is Berlin. We may also sue the Supplier at its general place of jurisdiction at our discretion.