

## General Terms and Conditions of Purchase of Schwarzwaldmilch Group (March 2018)

### 1. General, Scope of Application

- 1.1 These General Terms and Conditions of Purchase apply to all business transactions, contracts and agreements (the "Agreement(s)") conducted between companies of the Schwarzwaldmilch group (hereinafter referred to as "Customer") with other companies (Section 14 BGB [German Civil Code]), public entities or public funds (hereinafter referred to as "Supplier").
- 1.2 Contrary or supplementary terms and conditions of the Supplier become an integral part of any Agreement only if and to the extent the Customer has expressly agreed to their applicability.
- 1.3 Only the German language version of these Terms and Conditions of Supply shall be authoritative.

### 2. Offer and Conclusion of Agreement

- 2.1 In preparation of the offer, the Supplier is to adhere to the specifics of the Customer's invitation to make an offer and in the event of any deviation the Supplier is to expressly notify the Customer of any such deviation.
- 2.2 Customer may freely revoke orders until such time as the order is confirmed or in the absence of an order confirmation until delivery is made. The Supplier is obligated to confirm orders no later than 2 working days upon receipt of the order by means of a written order confirmation or by delivery. An order confirmation which is delayed or which states a delivery date, that deviates from the delivery date of our order, is deemed to be a new offer and requires confirmation by the Customer.
- 2.3 Any and all obligations arising from the Agreement have to be performed by the Supplier itself. The Supplier may use subcontractors for manufacturing only if Customer has provided prior written consent.

### 3. Amendments, Modifications and Additions

- 3.1 The Customer may at any time, at its reasonable discretion, demand reasonable amendments, modifications and additions of the order until such time as the product has been delivered (in the case of work and service agreements: until acceptance). The Supplier is obligated to propose amendments and modifications which it deems to be necessary and expedient in regard to a successful fulfillment and performance of the Agreement. Upon receipt of the Customer's written consent, the Supplier will perform such amendments and modifications.
- 3.2 To the extent an amendment or modification involves an increase or decrease in costs and/or in the event deadlines can no longer be met, the Supplier is obligated to notify the Customer of such circumstances (i.e. change in costs or delay) at such time when the Supplier proposes such amendment/modification or immediately upon receipt of the Customer's amendment/modification request. The Supplier's remuneration will be adjusted in accordance with the change in costs.

### 4. Delivery, Delivery Delay

Shipping is dispatched at the Supplier's risk and costs (DDP Freiburg/Offenburg according to Incoterms 2010). The Supplier insures the transportation risks at its own expense by means of a adequate

insurance policy and will furnish proof of insurance for inspection upon the Customer's request. In the event the freight costs are to be borne by the Customer, the Supplier must select the shipping mode with the most favorable shipping rates. Place of delivery and passing of risk is the receiving location as indicated by the Customer.

- 4.1 Unless otherwise expressly agreed, the delivery times and periods specified by the Customer are binding. In the event the Supplier becomes aware of any circumstances that possibly result in a delay of the delivery, the Supplier has to notify the Customer of this fact without undue delay.
- 4.2 Compliance with the agreed delivery periods and dates requires that the product is received at the location indicated by the Customer. In the event that any delivery involves the setting up, assembly or other services, the agreed delivery periods and dates are only met, if the Customer accepted the Supplier's performance.
- 4.3 In the event of any delivery delays for which the Supplier is at fault, the Customer may demand - in addition to further legal claims - a lump sum compensation for damages caused by the delay amounting to 1 % of the order value for each completed week of the delay, at the most, however, 5 % of the order value. The Customer may assert higher damages caused by delay upon providing the respective proof. The Supplier shall be entitled to provide proof that the Customer suffered no damages at all or lesser damages.
- 4.4 The Supplier is authorized to exercise its right of retention only insofar as its counterclaim is based on the same contractual relationship or on an undisputed claim or a claim that is binding and confirmed by a final court decision. The Supplier may only offset with undisputed counterclaims or with counterclaims, that are binding and confirmed by a final court decision, or with counterclaims which are reciprocal (im Gegenseitigkeitsverhältnis) with the claim of the Customer.
- 4.5 The Customer's complete order numbers and article numbers must be documented on the delivery notes, shipping advices, and way bills. In addition, the Supplier is obligated to draw up a supplier declaration for the Customer upon request.
- 4.6 The Supplier is to send a detailed shipping advice, separate from the goods and the invoice, to the Customer for each individual shipment at least 3 working days prior to shipping. The delivery note and packaging slip are to be attached to the delivery. In the event of shipment by sea, the name of the shipping company and the ship are to be specified in the shipping documents and invoices. If any product or equipment etc. is delivered in more than one component, these components are to be labeled and are to be positioned and described in the delivery note in accordance with the labels.

### 5. Prices and Payment

- 5.1 The agreed prices are fixed prices. All prices are without Value Added Tax, but include packaging, insurance, transportation and other ancillary costs.
- 5.2 The shipment date, the Customer's order number, article

number and Customer's Value Added Tax ID Number are to be noted on invoices and credit notes. Invoices must correspond to the order's delivery items description, sequence and prices. Any shipment, which includes a quantity exceeding the ordered quantity or falling short of the ordered quantity, has to be notified separately.

- 5.3 Unless otherwise agreed, payments are effected within 21 days with a 3% cash discount upon complete delivery and receipt of invoice or within 30 days net. The date of the Customer's bank transfer order shall be decisive. In the case of works agreements and service agreements, the acceptance date applies instead of the delivery date.
- 5.4 Payments do not infer acceptance of conditions, prices or any characteristics of the supplied goods.

## 6. Warranty (*Gewährleistung*)

- 6.1 The general limitation period for warranty claims (*Gewährleistungsfrist*) is 24 months, starting from the date of delivery to the final customer, at the latest, however, 3 years following delivery to the Customer (in the case of works contracts: 3 years following final acceptance).
- 6.2 The Customer shall have a duty to inspect the product (including documentation) upon receipt only for defects externally visible or identifiable by inspections using random samples (e.g. transportation damages, incorrect or short delivery) and shall be obliged to notify the Supplier of such defects. Notifications of defects shall – in any event – be considered to be in due time, if made within 10 working days upon the arrival of the respective goods at the Supplier's premises.
- 6.3 The Supplier shall be obliged to cover its risk of liability by maintaining sufficient insurance policy and shall submit evidence of such coverage to the Customer upon request.

## 7. Customer and Supplier Documents, Confidentiality

- 7.1 The Customer retains all titles and intellectual property rights to images, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents are to be used exclusively in the performance of the Agreement and are to be returned to the Customer upon fulfillment of the Agreement.
- 7.2 No document provided by the Customer may be disclosed to any third party, this also survives expiry of the Agreement. This duty to maintain confidentiality (secrecy) does not apply, if and to the extent information contained in the documents provided by the Customer has become general knowledge.
- 7.3 The Supplier may only refer to and publish the business relationships with the Customer if this has been explicitly authorized beforehand in writing (e.g. in an advertisement).
- 7.4 Drawings and all documents required by the Customer for the setup, operation, maintenance, inspection or repair of the product are to be provided by the Supplier without being specifically requested, free of charge and in due time. This also applies to required declarations of conformity and manufacturer declarations.
- 7.5 The Supplier is to request the Customer's specific company standards and specifications (*Werknormen*) and guidelines, to the extent they have not yet been provided.

## 8. Documentation

If the Customer may reasonably expect the delivery to include documentation (e.g. operating manuals, plans, drawings, electrical circuit diagrams, lubrication- and maintenance schedules), such documentation must be provided with the Supplier's purchase and/or order number and in electronic form upon delivery at the latest. All documentation shall be provided in the German language.

## 9. Reservation of Title

Unless otherwise agreed in writing, all forms of extended (*erweitert*) or prolonged (*verlängert*) reservation of title are excluded, so that a reservation of title, declared by the Supplier is only valid until the delivery item delivered to the Customer is paid in full and is only applicable to such delivery item.

## 10. Delivery of consumer goods

Insofar as the Supplier's performance involves the delivery of consumer goods (§ 2 para. 6 of the German Food and Commodities Act, LFGB in the currently valid version), the Supplier guarantees that the consumer goods delivered by Supplier (i) are in accordance with the applicable statutory requirements, (ii) correspond to the current state of the art and (iii) comply with the recommendations of the BfR (German Federal Institute for Risk Assessment and Risk Communication) and can be used by the Customer without restriction for the food production. The Supplier also guarantees that the consumer goods delivered by Supplier have been manufactured and/or treated under impeccable manufacturing conditions exercising due care and that all necessary hygiene and quality controls have been successfully completed.

## 11. Delivery of food, packaging materials and food additives

- 11.1 In the event of delivery of food, food additives and packaging material and unless otherwise stipulated herein, the special provisions of this Clause 11 shall apply in addition to the remaining provisions of these General Terms and Conditions of Purchase.
- 11.2 The Supplier guarantees that delivered goods are in conformity with samples and comply with the contractual agreements, in particular the quality and quantity information specified in the order as well as any specifications of the Customer referred to in the order.
- 11.3 The Supplier undertakes to fill in specification data sheets and, if necessary and/or requested by Customer, certificates of conformity provided by the Customer and to return same completed and signed to the Customer prior to the initial delivery and every three years thereafter .
- 11.4 The Supplier is responsible for the marketability of the goods both in the country of production and in the respective sales markets made known to him by the Customer. Insofar as the goods delivered by the Supplier are mixed, combined and / or processed by the Customer with other goods, the Supplier guarantees the fitness for use and marketability both with regard to the manufacturing process and with regard to the end product, insofar as the Customer informs the Supplier in writing about the use. The Supplier is obliged to proactively notify

the Customer of any concerns regarding the fitness for use of the delivered goods, in particular to indicate any special properties that need to be taken into account by the Customer with regard to the use of the goods in the manufacturing process.

- 11.5 Any change in quantities and / or compositions of the goods in the ingredient lists (recipe changes) as well as changes in packaging not in accordance with the specification agreed between the Customer and the Supplier must be notified in writing at least eight (8) weeks prior to the planned implementation and require the express written consent of the Customer, unless such changes are required by mandatory statutory provisions. Notwithstanding the consent of the Customer the Supplier remains solely responsible for the marketability of the goods in accordance with the above. Customer's consent shall further not affect any of its claims and rights.
- 11.6 The Supplier warrants that the goods have been subject to comprehensive checks during the whole manufacturing process. The Supplier is obliged to ensure that the production of the goods complies with all applicable legal requirements and the current state of the art, taking into account the special requirements of the product-specific food industry. In addition to compliance with the relevant food law regulations, the Supplier must ensure, without prejudice to further obligations, that production and storage specific requirements in accordance with the intended use of the goods are met.
- 11.7 Before the start of production, the Supplier warrants that Supplier will only use ingredients from third party suppliers that fully and without reservations have warranted the marketability and health safety of their raw materials. The third party suppliers are to be named at the justified request of the Customer. Upon request by the Customer, the Supplier shall provide appropriate proof (test certificates from accredited laboratories) of its goods and the ingredients of the third party supplier. The Supplier warrants that he monitors the above-mentioned third party suppliers and continuously carries out incoming goods inspections in accordance with the industry standards or better. The Customer is entitled to foreclose the commissioning of individual third party suppliers if same is justified by reasonable doubts about their quality standards.
- 11.8 The Supplier warrants complete retraceability of the goods delivered by Supplier in accordance with the applicable legal provisions. Retraceability shall also cover the ingredients used, raw materials, additives and auxiliary materials, the time of manufacture or production, packaging materials and the course of the manufacturing process. The Customer may, on reasoned grounds, demand and Customer shall provide immediately upon request all required information, without prejudice to any further claims or rights of the Customer. The Supplier warrants the unrestricted marketability of the goods delivered by him.
- 11.9 The Supplier warrants that the goods delivered by him are not genetically modified food in accordance with the applicable legal provisions (in particular Regulation (EG) No. 1829/2003 and Regulation (EG) 1830/2003 and their possible successor regulations), except accidental or technically unavoidable contamination with genetically modified material of less than one percent per ingredient. The Supplier warrants that the goods do not have to be specifically labelled.
- 11.10 In the case of goods with a shelf-life indication (best before date, use-by date, shelf life), the goods are free of defects if, at the time of delivery, the period available to the Customer for processing (and, if

applicable, marketing) of the goods is at least 80 % of the total shelf-life.

- 11.11 Upon request, the Supplier shall immediately and free of charge provide the Customer with the written documents and declarations (e.g. certificates of origin, health certificates, safety certificates) required or helpful for the export of the goods. The Supplier warrants the authenticity and accuracy of the content of the documents and declarations.
- 11.12 If the Supplier supplies packaging material, the Supplier also warrants that this packaging material will not have any adverse effects on the Customer's packaged products.
- 11.13 Unless otherwise agreed in writing, one-way sales packaging of the goods may bear the "Grüner Punkt" of DSD (Duales System Deutschland Gesellschaft für Abfallvermeidung und Sekundärrohstoffgewinnung GmbH). If the goods of the Supplier are delivered as packaged finished products, the Supplier is liable for the proper participation in the DSD and indemnifies the Customer against claims of third parties under private or public law for breach of the German Packaging Ordinance (VerpackV), contractual obligations or other legal provisions on packaging law.
- 11.14 In the event of public warnings regarding products of a similar nature or with comparable ingredients, the Customer is entitled to cancel undelivered orders in writing within one month of publication of the warning and to return goods already delivered against refund of the purchase price. The Supplier shall indemnify the Customer against costs and expenses incurred by the Customer in connection with the warning. Further claims of the Customer remain unaffected by the foregoing.
- 11.15 The Supplier guarantees that the goods are delivered in clean containers suitable for food transport, avoiding contamination and other negative influences. Liquid foodstuffs (e.g. milk, syrup, oil) are delivered in suitable silo vehicles which are only used for transporting foodstuffs. The containers are sealed before transport.

## 12. Final Provisions

- 12.1 The place of performance for all of the Customer's and Supplier's obligations shall be at the registered seat of the Customer.
- 12.2 This Agreement shall be governed by the Law of the Federal Republic of Germany; the UN Convention on Contracts for the international Sale of Goods shall not apply.
- 12.3 It is agreed, that the place of jurisdiction shall be at the registered seat of the Customer. In addition, the Customer is entitled to assert its claims at the Supplier's general place of jurisdiction. The Customer shall additionally have the choice to have any and all disputes arising out of the business relationship with the Supplier finally decided in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with said Rules. At the Supplier's request, the Customer shall execute the aforementioned right of choice regarding a certain dispute by declaration to the Supplier within one week from the receipt of the Supplier's request, if the Supplier wants to initiate legal proceedings against the Customer.