

## **General Terms and Conditions of Purchase of Meyer Gemüsebearbeitung GmbH**

### **§ 1. Subject matter of the contract/Scope**

- (1) These general terms of delivery and payment apply only to companies within the meaning of § 14 BGB (German Civil Code).
- (2) The Terms and Conditions of Purchase apply to all contracts of Meyer Gemüsebearbeitung GmbH (herein referred to as “**Buyer**”) with suppliers (hereinafter referred to as “**Seller**”), for the acquisition of foodstuffs, raw materials and other goods, unless otherwise agreed in writing. Conflicting or deviating conditions of the Buyer are not recognized. Silence of the Buyer on contradicting conditions of the Seller shall not constitute recognition. This also applies if the Purchaser refers to letters which contain or make mention of Terms and Conditions of Business of the contractor or a third party.

### **§ 2. Purchase order**

- (1) The Buyer’s order shall be regarded as binding with the written submission or confirmation, but not earlier. In the case of obvious errors and incomplete orders, including documents, the Seller must advise the Buyer for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not to be concluded.
- (2) The Seller is obligated to accept our order within a period of 2 days or execute the order without reservation.
- (3) The order number of the Buyer is to be stated on all documents (in particular advice note, delivery note and invoice).

### **§ 3. Service content**

- (1) Any violation of the statutory provisions and obligations applicable to the goods to be delivered by the Seller shall constitute a breach of an essential contractual obligation. In particular, all foodstuffs and fill quantities must comply with the food laws, regulations and directives applicable in Germany at the time of delivery.
- (2) In particular, the Seller undertakes to deliver only foodstuffs which fulfill the requirements of Regulation (EC) 178/2002, are traceable within the meaning of the regulation and marked according to legal requirements.
- (3) Specifically, the goods supplied must meet the following requirements:
  - (a) The raw materials do not contain genetically-manipulated organisms and have not been treated with ionizing rays.
  - (b) The products do not contain SVHC substances pursuant to Art. 59 Par.1 of the REACH Regulation.
- (4) Should the Buyer incur costs due to an infringement pursuant to Para. (1) or (3), these will be passed on to the Seller, unless he is not responsible for the infringement. Further statutory claims for damages remain unaffected.

### **§ 4. Analyses of the goods and assumption of costs**

- (1) The Seller is obligated, upon request of the Buyer and at the expense of the Seller, to have residue analyses and microbial analyses carried out on the goods to be delivered. These analyses are to be performed by a laboratory accredited in accordance with DIN EN ISO/IEC 17025:2005.
- (2) The results of the analyses, in the English or German language, are to be made available to the Buyer in good time, but at least two days before the planned delivery date.
- (3) In the case that the parties have agreed, as an exception, that the analyses are commissioned by the Buyer, the Buyer will invoice the Seller for the costs resulting from this plus a flat-rate processing charge of 50 Euros.
- (4) If, according to the results of the analyses, the goods do not conform to the specifications communicated by the Buyer, this constitutes a material breach of obligation by the Seller. In this case the Buyer is entitled to the warranty rights on account of defective goods pursuant to § 11.

### **§ 5. Delivery times**

- (1) The contractually agreed delivery time is binding.
- (2) The Seller is obligated to inform the Buyer without delay if circumstances arise or become apparent to him, which indicate that the agreed delivery times cannot be met.

- (3) In the case of delays in delivery, the Buyer is entitled to statutory claims. In particular, the Buyer is entitled to withdraw from the contract after fruitless expiry of a reasonable period for performance or supplementary performance and to claim damages in place of performance.
- (4) The buyer is not obligated to accept and pay partial or prior deliveries. Such may be rejected at the expense and risk of the Seller or may be stored.

#### **§ 6. Packaging and labelling**

- (1) The seller undertakes to comply with requirements arising from packaging regulations, in particular in accordance with the Packaging Ordinance.
- (2) The product packaging must be physically undamaged and designed in such a way that a negative influence on the product is excluded and the statutory hygiene standards are met.  
It must in particular
  - (a) be so designed that, under normal or foreseeable conditions, it cannot transfer any constituents to foodstuffs in quantities which could endanger human health or cause unacceptable changes in the foodstuff.
  - (b) meet the requirements of Regulation (EC) 10/2011 and be traceable pursuant to (EC) 1935/2004.
- (3) The requirements resulting from the **supplement “Beiblatt Materialien Produktverpackungen” (Product Packaging Materials)** also apply to the product packaging. These are also part of the contract. The Seller is obligated to comply with these provisions unless alternative agreements have been made.
- (4) All pallets and bundles must be labelled according to the specifications of the Buyer. Unless otherwise agreed, labels are to contain the following information: the name of the article, the minimum durability date/ best before date, as well as the lot or batch number. Pallet labels must also contain the number of bundles on the pallet and the total weight. Bundle labels must show the fill quantity of the bundle. In the case of organic products, the number of the organic control point and the organic logo must also be shown.

#### **§ 7. Delivery/Transfer of Risk**

- (1) Unless otherwise agreed in writing, terms of delivery are according to Incoterms 2010 DAP.
- (2) The Seller has - unless otherwise agreed in writing - to transfer the goods to the buyer at the place of destination, subject to the product-specific conditions. The risk of accidental loss and accidental deterioration of the good passes to the Buyer with the transfer.
- (3) Unless otherwise agreed by the parties, all goods are to be delivered in “clean” batches. In the case of a delivery that is not in “clean” batches, only a maximum of three different batches of an article may be delivered per truck or container. A pallet may contain only one kind of article, originating from a single batch.
- (4) Delivery vehicles used by the Seller or his vicarious agents must be technically and hygienically in impeccable condition. The Seller undertakes to ensure that contamination of the goods by foreign substances is excluded.
- (5) The charge number and minimum durability date/ best before date of the goods per pallet, as well as the name of the forwarding agent with indication of the vehicle registration number of the means of transport (truck) are to be sent to the Buyer by e-mail, fax or telephone before delivery. If this information is not available at the time the goods arrive at the warehouse of the Buyer, the Buyer may refuse acceptance of the goods and the unloading of the means of transport. Any costs incurred by the Seller as a result thereof will fundamentally not be reimbursed.

#### **§ 8. Documentation of goods and confirmation of product specifications**

- (1) The goods are to be accompanied by delivery notes in duplicate. The shipping documents must include the charge numbers and the order number of the Buyer. If this information is not correct or not complete, this is seen to be a breach of duty on the part of the Seller. In this case, the Buyer is entitled to the warranty rights under the terms of § 10. Any costs arising from this shall be borne by the Seller.

- (2) In the case of certified goods (e.g. organic), appropriate accompanying documents and product labels of the respective certification body must be attached to the goods in the valid version at the time of delivery.
- (3) The Seller shall also provide the Buyer with the following documents, at the latest at the time of delivery of the goods:
  - (a) the completed raw product specifications for each article, including the “Flowchart” of the manufacturing process.
  - (b) “Supplier self-assessment form”, signed by a person authorized to represent the Seller.
  - (c) The migration analysis for the product packaging pursuant to Regulation (EU) 10/2011.
- (4) The product specification with the parameters requested by the Buyer for the goods ordered shall be made available to the Buyer in digital form – if possible formatted in PDF file format – in good time before delivery.
- (5) The obligations specified in Para.(3)(a), (3)(b) and (4) do not exist if the seller has already handed over the documents once within the two years preceding the delivery date and the product specifications mentioned have not changed since that time.

#### **§ 9. Prices/Conditions**

- (1) The contractually agreed price is binding. The Seller is, however, obligated to reduce the price insofar as he reduces his list prices before or after receipt of the order, but before delivery to the Buyer. Price increases require the express consent of the buyer.
- (2) Agreed prices are net plus ancillary costs, such as freight, packaging, transport insurance, customs clearance and additional charges, as well as any roll-up fees/cartage and VAT at the legally applicable rate.
- (3) If the Seller provides the Buyer with product samples which the Buyer had requested for test purposes or for development work on new products, these shall be free of charge for the Buyer to an appropriate extent.

#### **§ 10. Payments/Cash discounts**

- (1) The Seller’s invoices must indicate the order number of the Buyer. The Seller is responsible for any delays or extra costs resulting from non-compliance with this obligation. The Buyer is entitled to return invoices which are not properly prepared and to demand proper invoicing.
- (2) Unless otherwise agreed, payment is to be made within 30 days minus any agreed cash discount.
- (3) Decisive for the payment period is the date of receipt of the invoice or, in the case of pre-invoicing, the date of complete delivery of the order to the Buyer.
- (4) The Buyer shall be entitled to assert statutory set-off and retention rights.

#### **§ 11. Warranty rights regarding defects**

- (1) The Buyer shall notify the Seller immediately of any obvious defects of fresh products, or within 5 days of receipt of the complete delivery in the case of all other products.
- (2) In the case of hidden defects, the notice period is one week after discovery of the defect. The settlement of invoices does not imply acknowledgement of the lack of defect of the goods delivered.
- (3) The seller shall, upon request, examine goods which are notified as defect immediately in the case of fresh goods and within 5 days in the case of other than fresh goods, at his own cost and to remove these at his cost in the case of a genuine defect. Should the collection not be effected within this period, the Buyer is entitled to store the goods at the cost and risk of the Seller or – in the case of risk of spoilage – to sell or to destroy the goods.
- (4) The Buyer is entitled to the statutory claim rights for defects in full.
- (5) The Buyer is also entitled to remedy the defect without the consent of the Seller and at his cost if there is a case of special urgency and the use of the Seller is not possible in time or is unreasonable, or after the Buyer has set a reasonable deadline for supplementary performance without success, unless the Seller has justifiably refused the supplementary performance. § 323 (2) BGB (German Civil Code) shall be correspondingly applicable for the setting of the deadline. The Buyer must inform the Seller of the self-remedy of the defect.

- (6) The statutory limitation rules apply.

#### **§ 12. Product liability/Exemption**

- (1) The Seller is obligated to indemnify us from all claims asserted by third parties due to personal damage (i.e. damage caused by death or injury to the body or health of a person) or material damage, insofar as these are based on a defect of delivered products, which are attributable to him.
- (2) Within the scope of his liability for damage in the sense of Para. (1), the Seller is also obligated to reimburse any expenses pursuant to §§ 683, 670 BGB as well as pursuant to §§ 830, 840, 426 BGB, which arise from or in connection with a recall action by the Buyer. The Buyer shall inform the Seller – as far as this is possible and reasonable – about the content and scope of the recall action and give him the opportunity to comment. This shall not affect other statutory claims.
- (3) If the seller is not the manufacturer of the delivered goods, but acts as a dealer, he is obliged in the event of a complaint to announce the supplier or manufacturer of the goods. In the case of a claim, the seller also undertakes to actively assist the buyer in defending against the claim by providing all necessary information and documents.
- (4) The contractor shall maintain suitable product liability insurance with coverage of at least 5,000,000 Euros per personal/material damage – flat rate – for the duration of the contractual relationship; that is until the end of the defect warranty period.
- (5) Any further damages claims of the Buyer remain unaffected.

#### **§ 13. Protective rights of third parties**

- (1) The Seller shall ensure that no third party protective rights are violated by the delivery/sales products e.g. with regard to the goods, their packaging or marking, as well as any advertising claims made in connection with the goods.
- (2) In the case that the Buyer is claimed against by a third party due to an infringement of the aforesaid protective rights, the Seller is obligated to exempt the Buyer against all such claims, rights and remedies against the Buyer, unless the Seller can prove that he is not responsible for the alleged infringement. The exemption also covers the costs and expenses of the defence of the Buyer against such third-party claims, rights and remedies.
- (3) In addition, the Seller undertakes, in the case of any claim pursuant to Para. (2), to assist the Buyer by providing all information and documentation necessary for defence of the claim. The Buyer will take due account of the Seller's interests.
- (4) The limitation of the Buyer's right to exemption against the Seller is governed by the statutory provisions.
- (5) In addition, the statutory warranty and liability provisions remain unaffected.

#### **§ 14. Confidentiality and amendments**

- (1) Ancillary agreements, amendments, additions or restrictions to these terms and conditions and the written contract content require the written form. Verbal ancillary agreements are ineffective. This also applies to ancillary agreements, amendments, additions or restrictions regarding this written form clause.
- (2) If provisions of these terms and condition or parts thereof are or become invalid, the validity of the conditions of purchase and of the remaining provisions of the contract shall not be affected.
- (3) The Buyer reserves the rights to property rights and copyrights on drawings, recipes, calculations and other documentation and auxiliary aids, with which the Buyer provides the Seller for the execution of orders; they may not be made available by the Seller to third parties without the express written consent of the Buyer. They are to be used exclusively for production on the basis of the order. After execution of the order, they are to be returned to the buyer without delay. They must be kept secret from third parties. The obligation to secrecy shall also apply after completion of this contract; it shall expire if and insofar as the production knowledge contained in the provided pictures, drawings, recipes calculations and other documentation is common knowledge.

#### **§ 15. Place of Performance, Jurisdiction and Code of Conduct**

- (1) The customer undertakes to comply with the BSCI (Business Social Compliance Initiative) Code of Conduct.
- (2) Place of performance and jurisdiction shall be the place of business of the Buyer. The Buyer is, however, entitled to sue the Seller at his place of business.
- (3) German law applies; the validity of the UN purchasing law is excluded.

## Supplement: Materials - product packaging

The product packaging to be used by suppliers must meet the following requirements:

Type of packaging	Basic material	Colour	Strength	Type of closure
Primary packaging - Plastic sacks	Polyethylene (HDPE or LDPE)	Blue	min. 120µm	sealed
Primary packaging -PE Inner bag Cardboard boxes	Polyethylene (HDPE or LDPE)	Blue	min. 40µm	not relevant
Primary packaging - Paper bags/sacks	No delivery in paper bags/sacks desired			
Secondary packaging - Cardboard boxes (corrugated cardboard)	C-flute	not relevant	not relevant	(exclusively) with blue adhesive tape

### Fundamentally applicable:

If the pallets are wrapped in foil, the goods must be completely enclosed and the product be undamaged.

Charge carrier-H1/Euro pallets, among other thing, must be in clean, in hygienically perfect condition and without physical damage.

Packaging material that comes into contact with food may not, under normal or foreseeable conditions, transfer any constituents to food in quantities which are likely to endanger human health or bring about unacceptable changes in the food.

The product packaging must comply with the European Regulation (EU) 10/2011 in the current valid version. Traceability must be demonstrated in accordance with Regulation (EG) 1935/2004.

Twistingingen, 3rd May 2018