

TERMS AND CONDITIONS OF PURCHASE AND ORDERING

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1 Scope

- 1.1 The delivery of goods, manufacturing of works or provision of (other) services, including ancillary services, are governed exclusively by these Terms and Conditions of Purchase and Ordering ("Terms and Conditions"). They apply exclusively in business transactions between us and entrepreneurs within the meaning of section 14 German Civil Code (*BGB*), legal entities under public law and special funds under public law ("Partner"). The Partner acknowledges these Terms and Conditions, also for subsequent deliveries and services within the framework of the ongoing business relationship, without us having to refer to the Terms and Conditions in each individual case.
- 1.2 Deviating terms and conditions, even if they have been notified to us by the Partner, do not apply unless they have been expressly confirmed or acknowledged by us in writing. Remaining silent with regard to deviating terms and conditions of the Partner notified to us, unconditionally accepting a delivery or service or making a payment without reservation will not be deemed to be acceptance of conflicting or deviating terms and conditions of the Partner.

2 Orders

- 2.1 Our orders are only binding if they have been placed by us in writing or in text form. Verbal agreements and agreements by telephone will only be binding once we have confirmed them in writing.
- 2.2 The Partner must confirm our order in writing or in text form without undue delay. If we have not received proper confirmation within 14 calendar days of the order being sent, we will have a right to revoke our order without the Partner being able to derive any rights from this.
- 2.3 The Partner's offers must be free of charge for us. We can accept an offer from the Partner within 14 days of when it was made. The Partner will be bound by its offer until expiry of this period. If we remain silent, this does not give the Partner the right to rely on a contract being concluded. If the Partner receives our acceptance of the Partner's offer late, the Partner must inform us about this without undue delay.
- 2.4 If an order is a delivery call-off under a quantity contract or framework agreement agreed between us and the Partner, this will be binding for the Partner if the Partner does not object within five (5) days of receipt. There is no obligation on our part to issue delivery schedules under a framework agreement. In all other respects, the provisions for orders in these Terms and Conditions apply accordingly to delivery call-offs.

3 Delivery/performance

- 3.1 If delivery dates or dates for performance of a service have been agreed, the relevant deliveries must be made or the relevant services performed by the agreed date. As soon as it becomes apparent to the Partner that it will not be able to perform an order in full or in part in

due time, the Partner must inform us about this within one working day of this having become apparent. If delivery dates or dates for performance have not been agreed, the delivery or performance date must be agreed with us and confirmed by us. Delays in acceptance by us due to improper notification of the delivery and performance date are the responsibility of the Partner.

- 3.2 Decisive for compliance with the delivery and performance dates by the Partner is the deliveries being handed over to us on the agreed date. If the deliveries or services require acceptance, the respective date will be deemed to have been met if the Partner provides the deliveries or service to us ready for acceptance on the agreed date. The Partner is not entitled to make early delivery or performance.
- 3.3 If dates are only agreed as "approximate" or otherwise stated in a rough manner, a maximum tolerance of 4 working days will be deemed to be agreed.
- 3.4 Part deliveries or part services are only permissible if they have been agreed with us in writing or in text form. The Partner is not entitled to deliver more or less goods than ordered. Any harvesting, catching and shooting reservations of the Partner do not apply unless we have given our written consent to this.
- 3.5 If, due to force majeure, riots, industrial disputes, operational disruptions and restrictions for which we are not responsible and in similar cases, it is not possible for us to accept the delivery or service or if this is considerably more difficult, we will have a right to change the period for acceptance in accordance with the duration of the impediment without the Partner being able to derive any claims against us from this. If the impediment to acceptance lasts longer than one (1) month, we and the Partner will have a right to rescind the respective contract in full or in part without the other party being able to derive any claims from this.
- 3.6 If the Partner does not meet a date agreed as a fixed date, we will have a right to rescind the contract even without setting a subsequent deadline. In this case, we are also entitled to claim compensation instead of performance. Our right to claim compensation for delayed delivery remains unaffected.
- 3.7 Acceptance of a delayed delivery or service does not constitute a waiver of the aforementioned or any other rights. Part deliveries or part services do not bring the delay to an end.
- 3.8 The Partner is liable for the losses incurred by us due to its delay in making the delivery/performing the service. These include expenses for any substitute procurement that may be necessary. Further-reaching claims remain unaffected.
- 3.9 Moreover, we will have a right to claim 0.2 % of the order value per calendar day by which the agreed date is exceeded as a contractual penalty for late delivery or performance, but not more than 5 % of the order value. The right to claim a higher amount of loss remains

unaffected. The contractual penalty must be offset against the loss for which the Partner must pay compensation. We will claim any contractual penalty incurred at the latest at the time of payment of the Partner's invoice. For this it is not necessary for us to express a reservation when accepting the delivery or service.

3.10 The Partner will only have a right of set-off or retention on the basis of counterclaims which have been finally established by a court of law or which are undisputed or if the counterclaim is in a synallagmatic relationship with our claim.

4 Transfer of risk, acceptance and reservation of title

4.1 The Partner will bear any risk, including the transport risk and right of accidental loss or accidental deterioration, until the time of acceptance by us, which in the case of the delivery of goods free domicile will take place either at our premises or at the place of delivery specified by us. If the deliveries or services require acceptance, the risk of accidental loss and accidental deterioration of the delivery will only pass to us upon acceptance.

4.2 In the event that, in the case of delivery of goods, we collect the goods ourselves or the goods are collected by a carrier commissioned by us from the Partner's warehouse or cold store, only the transport risk and the risk of accidental loss or accidental deterioration will pass to us at the time when the goods are loaded onto our means of transport or the means of transport of the carrier commissioned by us. In all other respects, the acceptance and transfer of risk provisions set out in clause 4.1 above apply.

4.3 Unless otherwise agreed, the goods must be handed over to us unconditionally and irrespective of whether or not the agreed purchase price has been paid.

4.4 Any reservation of title in favour of the Partner will have the effect of a simple reservation of title. We reject any extended or expanded reservation of title by the Partner. Title will pass to us at the latest upon payment of the purchase price for the delivered goods. We are in any case permitted to resell or process the goods in the ordinary course of business, even before payment of the purchase price.

4.5 Deliveries and services will only require acceptance if this has been expressly agreed between us and the Partner or if this results from statutory provisions. Unless otherwise agreed, we may declare acceptance up to two (2) weeks after notification of completion of the delivery or service by the Partner. Acceptance requires an express written declaration from us. Partial acceptances are excluded as a matter of principle.

4.6 Before delivery, the Partner must carry out a careful outgoing goods inspection. Deliveries that have not passed this inspection may not be delivered.

5 Prices and payment

5.1 The agreed prices are fixed prices. Unless expressly agreed otherwise, prices are inclusive of packaging, transport, freight and storage costs, insurance, customs duties, taxes, assembly costs and all other ancillary costs.

5.2 Unless otherwise agreed, our payments will be made within 10 calendar days of receipt of the invoice with 3 % discount, within 14 calendar days of receipt of the

invoice with 2 % discount or within 30 calendar days of receipt of the invoice net. If the invoice is received by us before acceptance of the invoiced goods or services, the payment periods will not commence until acceptance has taken place. It will be sufficient for our transfer order to have been received by our bank for a payment owed by us to be considered timely.

5.3 Invoices will be issued stating the order number, material number, article description and unit price per sales unit as well as, if applicable, further information about which we will inform the Partner before it issues the invoice (such as MSC/ASC or BIO certifications).

5.4 We will have unrestricted rights of set-off and retention within the framework of the statutory provisions.

6 Quality

6.1 The goods to be delivered or the service owed must comply in terms of their composition, quality, packaging, declaration and goods specification with the respective applicable national and foreign statutory provisions, the relevant regulations and directives, in particular the provisions under food law and, in the case of technical services, the directives, regulations and provisions of the building supervisory authorities, trade supervisory authorities and fire protection authorities, the employers' liability insurance associations and utility companies and the respectively applicable DIN standards and VDE regulations, CE markings and EC certifications. The Partner expressly warrants compliance with the aforementioned provisions. If the goods to be delivered or the service owed do not meet these requirements, the Partner will have a duty, without prejudice to further-reaching claims, to reimburse all costs necessary for legal defence measures, including the costs of experts, as well as the costs of any recall action which may be necessary.

6.2 The Partner undertakes to provide proof of compliance with the aforementioned provisions, in particular the provisions under food law, upon our request. Proof will be provided by the Partner providing us with records from its operating laboratory or an official body upon request. All costs associated with providing this proof will be borne by the Partner.

6.3 The Partner warrants that the goods to be delivered or the service owed comply with our special requirements and specifications – the details of which it is aware of from the order – and, in particular, with bofrost*'s qualitative guidelines for action. This applies, for example, with regard to weight, quantity, market and quality regulations and lot samples. Samples provided and on which our orders are based are binding. Their quality and condition are deemed guaranteed for the delivery or service. Taking account of the Food Information Regulation as amended, the ingredients contained must be listed in descending order. This also applies to all other components of the delivered product (e.g. fish or meat weight) which are subject to declaration. Changes to the specification are only permitted with our written consent.

6.4 The Partner warrants that all goods ordered by us meet our minimum requirements and are stored and transported accordingly. In the case of deep-frozen goods, the Partner warrants that all points of the

products are kept at minus 20° Celsius (ice cream minus 22° Celsius) during storage and minus 18° Celsius (ice cream minus 20° Celsius) or lower during transport. If these minimum requirements are not met, acceptance will be at our discretion and option for storage purposes only. Should we store goods that have not been accepted, this will be done on behalf of, at the risk of and at the expense of the Partner. Claims against the Partner due to defects, regardless of the type, as well as claims due to the breach of other duties arising from the contractual relationship will not be affected as a result of the storage.

6.5 We have a right to carry out unannounced inspections at the premises of the Partner's production plants during normal business hours to the extent that the production of goods to be manufactured or services to be performed for us are concerned. Furthermore, we have the right to inspect the documents which exist at the Partner concerning the quality control of the goods produced or services to be performed for us and to make copies for ourselves. The Partner has a right to take reasonable measures to protect its trade and business secrets.

7 Packaging

7.1 The Partner warrants that the packaging complies with the relevant national and foreign statutory provisions, regulations and directives. In strict compliance with this obligation, it must print the packaging material in accordance with our specifications, in particular with regard to the material, design, layout and/or quality standards, at packaging manufacturers preferred by us or mutually agreed with us. Packaging designs, quantities and reprints must be agreed with us in advance in writing or in text form (email is sufficient). Should our specifications contradict the relevant national and foreign statutory provisions, regulations and directives, the Partner will have a duty to inform us about this without undue delay. We have no obligation to accept packaging not agreed with us in accordance with this clause 7.1. The Partner will report to us the level of the empty packaging stocks and finished goods stocks by the third working day of each month in writing or in text form (email is sufficient) without awaiting a request to do so.

7.2 If there are changes to the statutory provisions concerning the declaration or design of the packaging, the Partner must notify us without undue delay. The Partner will compensate us for any losses resulting from delayed notification of such changes in the law. These include, among other things, the disposal costs for packaging material that can no longer be used due to the delayed notification.

7.3 Goods in bofrost* packaging or in other special packaging manufactured for us may only be delivered to us. They must not be further traded or otherwise placed on the market in this packaging. This also applies in particular to the packaging of returned goods. If the Partner breaches the above-mentioned duty, it will have a duty to pay a contractual penalty, to be reasonably determined by us, but not less than EUR 25,000.00 and, in the event of a dispute, to be reviewed for its appropriateness by the court with jurisdiction pursuant to clause 14.2. Notwithstanding section 341

(3) German Civil Code (*BGB*), we do not have to claim the contractual penalty until the purchase price is being paid. Our right to claim further compensation, offsetting the contractual penalty, remains unaffected.

7.4 The ordering of packaging as well as the issuing of print releases by us will under no circumstances be understood to be an order for the corresponding (finished) goods or raw materials or components required for this.

7.5 Packaging material which, for whatever reason, has not been used for packaging goods intended for us must be destroyed by the Partner if we instruct it to do so.

7.6 The Partner warrants that the packaging material is suitable for euro pallets and complies with our special bofrost* packaging requirements and packaging specifications of which the Partner is aware. If these requirements are not met upon delivery, the goods may be rejected or acceptance refused without prejudice to further rights, in particular under section 437 German Civil Code (*BGB*).

8 Material defects of the goods and product liability

8.1 Notwithstanding clause 6 above, our rights in the event of material defects will be governed by the statutory provisions.

8.2 The Partner will inform us, without awaiting a request to do so, if it has reason to believe that the goods are defective. The parties agree that a suspicion of a defect – irrespective of whether it proves to be justified in retrospect – is equivalent to a material defect if it has the effect of reducing quality (e.g. suspicion of salmonella in food).

8.3 If statutory obligations to inspect and give notice of defects (sections 377, 381 German Commercial Code (*HGB*)) apply, these will apply with the proviso that we will only be obliged to inspect the goods after they have been delivered with regard to quantity, type, externally visible defects (e.g. transport damage) and other obvious defects. If agreed, deviating from this, individual Partners will require express approval by us. We also carry out random checks which are customary in the industry and which are documented by us. We will provide copies of the analysis results to the Partner upon request in cases where goods have been rejected. We may give notice of obvious defects up to five (5) days after delivery and of hidden defects up to ten (10) days after they have been discovered. If the examination method to be applied in the case of random samples customary in the industry and/or appropriate random samples requires a longer period, our period for giving notice of defects will be extended accordingly, but in the case of visible defects to no more than ten (10) days after delivery and, in the case of hidden defects, to no more than 14 days after they have been discovered. If acceptance has been agreed, we will have no inspection and notification obligations prior to acceptance. We have a right to give notice of such defects even if the defective goods have been processed by us in the meantime. We have no further-reaching obligations to inspect and give notice of defects beyond those set out above.

8.4 If there is a defect, we will be entitled to the statutory rights in respect of defects without restriction. Without prejudice to our other rights in respect of defects, we

will, in particular, be entitled to demand, at our discretion, that the defect be remedied or that new goods be delivered or manufactured. If the Partner does not observe its duty to provide subsequent performance within a reasonable period set by us, we can remedy the defect ourselves and claim from the Partner reimbursement of the necessary expenses and/or a corresponding advance on the costs. If subsequent performance by the Partner fails or is unreasonable for us (e.g. owing to a particular urgency, risk of operational safety or impending disproportionate losses), there will be no requirement to set a such a period. We will inform the Partner of circumstances justifying the unreasonableness without undue delay, where possible before we remedy the defect.

8.5 If a material defect or a suspected defect gives cause to recall or issue a warning about the goods, the loss to be compensated by the Partner will also include the loss caused by the recall or the warning. The parties agree that the reputational damage resulting for us from a recall or warning will amount to a flat rate of 5 % of the order value of the goods, unless the Partner proves that lower or we prove that higher losses were incurred.

8.6 The Partner must indemnify us against all claims of third parties in connection with product and manufacturer's liability for the goods if these claims result from its sphere of control and organisation, unless the Partner is not responsible for this. In the framework of its indemnification obligation, the Partner must reimburse us all additional costs which result from or in connection with a claim by third parties, including the costs of product recall actions we have carried out. We will inform the Partner – as far as possible and reasonable – about the content and scope of any measures. Further-reaching claims remain unaffected.

9 Legal defects in the goods

9.1 The Partner warrants that all deliveries or services are free of third-party rights, in particular that the execution of the order does not infringe any national property rights or property rights in the European Community or other ancillary copyrights in Germany or other countries in which we are active ("Property Rights").

9.2 If a third party asserts claims against us due to the infringement of Property Rights with regard to a delivery or service of the Partner, the Partner will – without prejudice to our further rights – either obtain a right of use, modify its delivery or service in such a way that the Property Right is not infringed or exchange its delivery or service for a new one, at its discretion and at its expense. Further-reaching rights due to the existence of a legal defect pursuant to sections 437 or 634 German Civil Code (*BGB*) remain unaffected.

9.3 Furthermore, the Partner will indemnify us and our customers against all claims of third parties arising from any legal defect which exists. In the event of an infringement of Property Rights, we will be entitled to revoke an offer made by us even before the order has been placed.

10 Legal and material defects in construction and assembly services

For construction and assembly services, the version of the Construction Contract Procedures (*VOB/B*) applicable at the time of conclusion of the contract applies. The statutory rights to which we are entitled in the event of defects, in particular under section 634 German Civil Code (*BGB*), remain unaffected in any case.

11 Rights of use and exploitation

11.1 If the deliveries or services or the documents and information in connection with these contain Property Rights of the Partner or third parties, the Partner will transfer to us in this respect irrevocably, unconditionally and for an unlimited period of time all Property Rights of the Partner or the third party required for the contractually stipulated and customary use of the deliveries and services in a manner unlimited in terms of time and territory and in such a way that they are fully or partially transferable and sub-licensable.

11.2 If a transfer of the Property Rights is not possible for the Partner due to mandatory statutory provisions, the Partner will grant us all relevant rights of use and exploitation, including the right to publish, distribute, reproduce and process, to the aforementioned extent, so that we can use, exploit and process the deliveries in the contractually stipulated manner and in line with their usual use. If the Partner provides deliveries or services exclusively for us, it must grant us the related rights of use, exploitation and processing in an exclusive manner. The rights of use and exploitation granted relate to all types of use and exploitation, known and unknown at the time of delivery, and entitle us in particular to transfer the deliveries and services to third parties.

11.3 The transfer of rights or the granting of rights will be deemed paid with the respective agreed remuneration.

11.4 We are the sole owner of all Property Rights in any work results resulting from the use of the deliveries ("Work Results"). In this respect, the Partner undertakes to transfer to us any Property Rights in Work Results to which it may be entitled without separate remuneration without undue delay after they become known. If a transfer of Property Rights in Work Results should not be possible due to mandatory statutory provisions, the Partner undertakes to grant us all rights of use and exploitation in this respect, without separate remuneration, without undue delay after they become known in an exclusive manner which is unrestricted in terms of content, territory and time, irrevocable, unconditional and in a such a way that they are fully or partially transferable and sub-licensable.

12 Means of production, provisions

12.1 Title and all copyrights in documents, samples, materials, tools or other means of production provided by us ("Items Provided") will remain with us. They may not be made accessible to third parties without our prior written consent and may be reclaimed by us at any time as soon as they are no longer required for execution of the delivery.

12.2 Items Provided must be stored, marked and kept separately by the Partner free of charge. From the time when the Items Provided are handed over to the Partner, the Partner will bear the risk relating to the Items Provided until the time of any return to us. During this period, the Partner must pay compensation in the event of damage to or a loss of the Items Provided, unless we are responsible for this. Maintenance and repair work on tools provided or other means of production provided will be carried out by the Partner at its own expense. The Partner must notify us immediately of any malfunctions.

12.3 The preparation of drafts, projects, cost calculations, etc. is free of charge and non-binding for us, even if such services are usually only provided in return for payment. This also applies if we do not place the order.

13 Data protection

13.1 The Partner undertakes to comply with the provisions of the European Data Protection Regulation (GDPR) and the Federal Data Protection Act (*BDSG*) as well as other relevant data protection provisions and to protect personal data.

13.2 We process personal data of employees, agents and subcontractors of the Partner for the purpose of meeting contractual or statutory obligations. The Partner undertakes to inform the aforementioned persons about this.

13.3 In the event that the Partner processes personal data on our behalf, the Partner undertakes to enter into an order processing agreement with us within the meaning of Art. 28 GDPR in accordance with our current model agreement.

14 Reference

Unless otherwise agreed in the individual case, the Partner does not have a right to disclose to third parties the fact that we purchase goods or other services from the Partner, irrespective of whether the disclosure is made in writing, orally, by telephone, electronically or by other means.

15 Documents, confidentiality

15.1 We reserve all rights of title and industrial property rights such as patent, trade mark, utility and design rights as well as copyrights in illustrations, moulds, samples, designs and design proposals, models, drawings, know-how, calculations, work documents and other documents and records ("Documents") provided by us. These include, in particular, information on manufacturing processes, recipes and plant configurations. Without our prior written consent, Documents may only be used by the Partner for the contractually-specified purpose. The same applies to items manufactured on the basis of the Documents.

15.2 The Partner must treat all Documents and information, in particular know-how and trade secrets, which it obtains from us ("Confidential Information") confidentially as against third parties. In particular, the Partner is not authorised to disclose or make accessible the Confidential Information to third parties without our prior consent. The Confidential Information may only be used for the purposes of meeting the contractual obligations to us. The Partner must impose

a corresponding confidentiality obligation on its employees and other persons who have access to the Confidential Information in connection with implementation of the contract.

15.3 Exempt from the obligation in clause 15.2 is information insofar as it (a) was demonstrably already known to the Partner at the time of conclusion of the contract or subsequently becomes known from a third party without a confidentiality agreement having been breached or statutory provisions or official orders violated as a result, (b) is already generally known at the time of conclusion of the contract or subsequently becomes generally known insofar as this is not the result of a breach of this contract, (c) was independently developed by the Partner without access to our Confidential Information, or (d) must be disclosed due to statutory obligations or by order of a court or an authority.

15.4 The obligations set out in this clause 15 continue to apply beyond the end of the contract and the business relationship, irrespective of the manner in which the contract or the business relationship comes to an end.

16 Compliance, accident prevention

16.1 The Partner must act in accordance with the legal provisions applicable to it, in particular the provisions of competition law, the anti-corruption regulations and the anti-money laundering provisions.

16.2 The Partner must comply with the requirements of the bofrost* Supplier Code of Conduct at all times.

16.3 If the Partner provides services for us, it will be responsible for compliance with the accident prevention regulations, in particular those of the respective employers' liability insurance association. Furthermore, it undertakes to notify us of the names of its employees who enter our factory premises in order to perform the deliveries or services and to ensure that they observe the respective factory regulations or other regulations which apply at our factories on our factory premises.

17 Liability

17.1 Unless otherwise agreed, the Partner will be liable to us for compensation for losses and reimbursement of expenses in accordance with the statutory provisions.

17.2 We will not be liable to the Partner for compensation for losses and reimbursement of expenses, irrespective of the legal grounds (contract, tort, breach of duties arising from the contractual obligation, indemnification, etc.). The above exclusion of liability does not apply in the event of liability under the German Product Liability Act (*ProdHaftG*), in cases of intent or gross negligence, in the event of culpable injury to life, limb or health, or in the event of a breach of material contractual obligations. Material contractual obligations are obligations which must be performed in order for the contract to be properly performed at all and on the observation of which the Partner regularly relies and is entitled to rely.

17.3 However, our liability for breaches of material contractual obligations is limited to compensation for the foreseeable damage typical for the type of contract, unless we are liable on grounds of intent or

gross negligence, injury to life, limb or health or under the German Product Liability Act (*ProdHaftG*).

- 17.4 Where our liability is excluded or restricted, this also applies to the corresponding personal liability of our statutory representatives and vicarious agents, representatives and employees.

18 Place of performance and place of jurisdiction

- 18.1 The place of performance for all deliveries or services is the place of delivery specified by us. The place of performance for payments to us and for our payment obligations is D-47638 Straelen.
- 18.2 The exclusive place of jurisdiction for disputes arising from or in connection with these Terms and Conditions and the contractual relationship between us and the Partner is the court with jurisdiction for our registered office in D-47638 Straelen, including in proceedings relating to bills of exchange and cheques. We will also have the option of bringing an action before the courts with jurisdiction for the Partner's place of business or its lead branch.

19 Miscellaneous

- 19.1 If individual contractual provisions are invalid, the remaining provisions will remain fully effective. Ineffective provisions will be replaced by provisions which, in terms of their economic result, come as close as possible to the economic purpose pursued by the respective ineffective provision.
- 19.2 All legal relationships and legal acts in the relationship between us and the Partner and its legal successors are subject exclusively to the substantive law of the Federal Republic of Germany, excluding application of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (BGBI. 1989 II p. 588 ff.).