

# Terms and Conditions of Purchase of UNIQFOOD GmbH and UNIQFOOD Produktions GmbH

(Last updated January 2024)

- referred to hereinafter as Purchaser -

## **1. General conditions, scope of application, conclusion of contract, written form, confidentiality**

- 1.1. The Terms and Conditions of Purchase apply UNIQFOOD GmbH and UNIQFOOD Produktions GmbH
- 1.2. The Purchaser orders exclusively on the basis of its Terms and Conditions of Purchase; the Purchaser shall not recognise terms and conditions of the Contractor which conflict with or depart from the Purchaser's Terms and Conditions of Purchase unless it has expressly agreed to their validity in writing. The tacit acceptance of supplies or services from the Contractor and payments made by the Purchaser do not indicate any agreement to conflicting terms and conditions of the Contractor.
- 1.3. These Terms and Conditions of Purchase only apply to companies pursuant to Section 310 Para. 1 BGB [German Civil Code].
- 1.4. The statutory provisions apply in addition to these Terms and Conditions of Purchase.
- 1.5. No remuneration is granted for visits or for the preparation of quotations, projects, sketches or sample deliveries.
- 1.6. Orders, call-off orders, agreements of all kinds and modifications or additions to these are only effective when made in writing. Compliance with the written form includes declarations sent by fax, email or other remote data transmission. No signature is required for compliance with the written form. The aforementioned requirement for the written form also applies to the cancellation of this agreement on the written form. Verbal agreements before or during the conclusion of contract require the written confirmation of the Purchaser for them to be effective.
- 1.7. The Contractor must treat the conclusion of contract as confidential, and is only permitted to refer to business connections with the Purchaser in all publications, e.g. in advertising materials and lists of references, after the Purchaser has issued its written consent.
- 1.8. The Contractor shall not make information it has acquired accessible to third parties insofar as it is not lawfully known generally or by the Contractor in some other way.

## **2. Transfer of risk, dispatch, prices, receipt of goods, ownership**

- 2.1. In the case of deliveries including assembly and installation, and in the case of services, the risk shall pass to the Purchaser on acceptance; in the case of deliveries excluding assembly or installation the risk shall pass to the Purchaser upon receipt at the place of receipt stated by the Purchaser.
- 2.2. Every delivery must include a packing slip or delivery note stating the contents, quantity, batch code and the complete order identification.
- 2.3. Additional deliveries and services provided, and part-deliveries and part-performances, are only accepted with the advance written consent of the Purchaser.
- 2.4. The shipment addresses are always stated on orders from the Purchaser. Any costs incurred due to non-observance of these shall be at the Contractor's expense.
- 2.5. If delivery takes place earlier than agreed, the Purchaser reserves the right to undertake a return shipment at the Contractor's expense and risk. If no return shipment takes place after premature delivery, the goods shall be stored on the Purchaser's premises or the premises of an external warehouse keeper used by the Purchaser at the Contractor's expense and risk until the delivery date. The payment of the invoice shall take place within the due period in relation to the agreed delivery date.
- 2.6. Purchaser shall acquire ownership of the delivered Goods by complete payment of the purchase price (**reserved goods**). However, the Purchaser is authorized to use the reserved goods and resell them in the ordinary course of business provided he is not in default of payment. The Purchaser is not entitled to pledge the reserved goods as security or mortgage them. He hereby assigns to the Contractor by way of security all claims for payment of the Purchaser against his customers arising from the resale of the reserved goods as well as all claims of the Purchaser against his customers or third parties in respect of the reserved goods arising from any other legal grounds (in particular claims arising from tortious acts and claims for insurance benefits). The Contractor hereby accepts this assignment. The Purchaser may collect these claims assigned to the Contractor on his own account in his own name for the Contractor. The Contractor will not assert the claims himself and will not revoke the authorisation for direct collection as long as the Purchaser completely fulfils his payment obligation. The Purchaser may further process the reserved goods. The Contractor warrants that there are no third party rights of any kind (e.g. retention of title, liens) and indemnifies the Purchaser against claims by third parties in this respect.

## **3. Delivery date, default of delivery, contractual penalty**

- 3.1. Agreed dates are binding. The timeliness of deliveries excluding assembly or installation is determined by the receipt of these at the place of receipt stated by the Purchaser; the timeliness of deliveries including assembly or installation is determined by the acceptance of these.
- 3.2. Without prejudice to the Purchaser's statutory entitlements, the Contractor is obliged to inform the Purchaser immediately if circumstances occur or

become identifiable to the Contractor which are likely to make a timely delivery impossible.

- 3.3. If the Contractor has culpably failed to inform the Purchaser in writing that timely delivery is probably impossible, the Contractor shall be liable to the Purchaser for any damage caused thereby. Further claims for damages remain unaffected.
- 3.4. In the event of default of delivery by the Contractor, the Purchaser is entitled to request a contractual penalty of 0.2% of the net order value per calendar day of default, at most 5% of the net order value. The Purchaser reserves the right to further statutory claims; if these are asserted, any contractual penalty already effected shall be set off against the damages asserted. The Purchaser is entitled until the final payment to declare to the Contractor that it wishes to assert the contractual penalty. The Contractor shall have the right to prove that no damage at all or a considerably lower damage has arisen as a result of the delay.

## **4. Prices, invoices, payment, setting off, retention, assignment of claims**

- 4.1. The agreed prices are fixed prices and, unless otherwise agreed in the agreement, for delivery at place including packaging and transport costs, customs duties, dual system charges and transport insurance.
- 4.2. Verifiable invoices must be sent to the agreed invoice address of the Purchaser, stating the complete order identification and taking account of the respective latest invoicing regulations in accordance with the current taxation laws. Incorrectly submitted invoices shall only be regarded as having been received by the Purchaser from the date on which they are corrected.
- 4.3. Unless otherwise agreed, payments shall be made within 14 days with the deduction of a 3% discount or within 30 days purely net after delivery or acceptance respectively and the receipt of a proper invoice. The deduction of a discount is also permissible if the Purchaser sets off or retains payments in the appropriate amount on account of defects. The payment period for the amount withheld shall commence after the defects have been completely rectified.
- 4.4. Insofar as the Contractor is obliged to provide documentation, operating instructions or certificates of materials testing, the payment period for invoices shall not commence before the receipt of this documentation or these certificates.
- 4.5. By making payments, the Purchaser neither recognises the correctness of the invoice nor the fact that the supply/performance is according to contract.
- 4.6. The Contractor shall only be entitled to rights of set-off if its counterclaims are legally established, undisputed or recognised by the Purchaser. The Contractor is only entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship or is legally established, undisputed or recognised by the Purchaser.
- 4.7. The Contractor can only cede claims against the Purchaser to third parties with the Purchaser's written consent.

## **5. Termination or withdrawal for cause**

- 5.1. The Purchaser is entitled to terminate the agreement for cause or withdraw from the agreement, in particular if the Contractor has submitted an application for the opening of insolvency proceedings, or if the Contractor has suspended its payments more than just temporarily, or if insolvency proceedings are opened in respect of the Contractor's assets or the opening of proceedings has been refused due to insufficiency of assets. The Purchaser's claims for damages remain unaffected by this.

## **6. Execution of deliveries / services, changes**

- 6.1. The Contractor warrants that all deliveries / services shall be executed or provided professionally in accordance with the agreed specifications, and correspond to the latest state of technology, the relevant statutory provisions, and the regulations and guidelines of the authorities, the employers' liability insurance associations and the professional associations.
- 6.2. In the case of the delivery of foodstuffs, other substances used in the manufacture of foodstuffs, packaging materials for foodstuffs and other materials that come into contact with foodstuffs during the manufacturing or packaging process, it shall be deemed to be an agreed property that they are harmless in respect of the purpose communicated to or known by the Contractor, and correspond to all the relevant provisions of the German food legislation in force, in particular the Lebensmittel-, Bedarfsgegenstände- und Futtermittelgesetzbuch [German Food and Feed Code] (LFGB, amongst others Sections 30,31), the Bedarfsgegenständeverordnung [Consumer Goods Ordinance] (BedGegstV, amongst others Sections 7,8,11), the Verordnung über tiefgefrorene Lebensmittel [Ordinance on Frozen Food] (TMLV, amongst others Section 4), as well as the respective EU regulations in force and the EU directives that have been enacted in German law. A specification must be submitted for all foodstuffs and packaging that are to be delivered to the Purchaser irrespective of whether these are used for production or testing purposes. In the event of changes, the specifications must be updated immediately by the Contractor and provided to the Purchaser.
- 6.3. The Purchaser can also request changes to the delivery item or the subject of the services after the conclusion of contract, provided this is reasonable for the Contractor. If the agreement is modified in this way, the effects for both sides, especially in respect of the additional or reduced costs and the delivery dates, should be taken into account appropriately.
- 6.4. The Contractor declares its agreement to the Purchaser's representatives

visiting the Contractor's production plant at any time during normal working hours without advance notification, and to the quality assurance measures it has implemented being reviewed by the Purchaser and the associated documents being inspected.

## **7. Claims arising due to defects, limitation period**

- 7.1. The limitation period for claims arising as a result of defects is 36 months unless anything has expressly been agreed otherwise or the law provides for a longer limitation period. The limitation period commences with the handover of the delivery item to the Purchaser or the third party appointed by the Purchaser, at the place of receipt or use specified by the Purchaser. The limitation period for articles that are to be assembled at the place of receipt or use commences once the assembly has been completed and when the agreed trial operation has been undertaken without objections.

If a contract for work and services exists, the limitation period always commences once the acceptance has been made. In all other cases, the limitation period also only commences once the acceptance has been made, unless the agreed assembly, the implementation of the agreed trial operation or the contractually agreed acceptance is delayed, without this being the fault of the Contractor. In this case the limitation period shall commence at the latest 6 months after the delivery of the delivery item.

Claims on account of defective construction works, and on account of defects in articles which have been used for construction work in accordance with their usual manner of use and have caused the defectiveness of such work, expire 5 years after the acceptance of the construction work or the delivery of the articles.

- 7.2. If the Contractor fulfils its obligation to provide supplementary performance by means of replacement delivery, the limitation period for the product or work supplied as a replacement shall start running afresh after delivery or acceptance, unless the Contractor makes the replacement delivery objectively only as a gesture of goodwill; in particular to avoid disputes or in the interest of the continuation of the supply relationship and has expressly stated this in the supplementary performance.
- 7.3. The right to supplementary performance by the Contractor shall lapse if the Contractor refuses supplementary performance on first request or if supplementary performance has failed or if the Purchaser cannot reasonably be expected to accept supplementary performance. In the case of just-in-time contracts, in particular in the case of orders for foodstuffs, there is no right to supplementary performance on the part of the Contractor due to the requirement of punctuality of delivery.
- 7.4. The limitation of the claims arising as a result of defects shall be suspended for as long as the Contractor has not definitively rejected the Purchaser's claims in writing after being notified of the defect in good time.
- 7.5. By confirming the receipt of deliveries and by approving drawings submitted to it, the Purchaser does not renounce claims arising from defects and other rights.

## **8. Packaging**

- 8.1. The goods must be packed in such a way as to prevent damage during transport. Packaging materials must only be used to the extent necessary for achieving this purpose. Only environmentally friendly packaging materials must be used.
- 8.2. In the case of the delivery of foodstuffs, other substances used in the manufacture of foodstuffs, packaging materials for foodstuffs and other materials that come into contact with foodstuffs during the manufacturing or packaging process, the product and transport packaging and the means of transport used must be in a hygienically faultless condition and suitable for storage under deep-freeze conditions. The Contractor warrants in particular that the product packaging is free from non-product-related elements of any kind, that the migration limits specified in the *Bedarfsgegenständeverordnung [Consumer Goods Ordinance]* have not been exceeded, and that the packaging components do not consist of glass, metal or wood. All shipments must be labelled in accordance with the relevant specifications.
- 8.3. In addition, the Contractor must comply with the relevant statutory regulations for packaging.

## **9. Product liability, indemnity**

- 9.1. If a defect in a product of the Purchaser which is attributable to a product of the Contractor causes death, harm to personal injury or physical health or damage of an object and if claims are made against the Purchaser as a result of this by domestic or foreign product liability regulations independent of fault, the Contractor shall be obliged to compensate the Purchaser for the resulting damage, but only to the extent that this damage is caused by the defective product of the Contractor. The exceptions of the Product Liability Act, in particular Section 1 para. 1 sentence 2, para. 2 and para. 3 ProdHaftG shall apply accordingly to the Contractor. The provisions of clause 9.1. shall only apply to claims arising from product liability regulations irrespective of fault. Further contractual and legal claims for damages remain unaffected.
- 9.2. If claims are asserted against the Purchaser on the basis of domestic or foreign product liability regulations due to the defectiveness of his product, which can be traced back to the delivery item/service of the Contractor and which does not constitute a product within the meaning of product liability regulations, he shall be entitled to demand compensation for this damage from the Contractor to the extent that this is caused by the delivery item/service of the Contractor. The right to assert further legal claims remains unaffected.

- 9.3. Insofar as the Supplier/Contractor is responsible for any defect/damage to a product of the Purchaser, the Supplier/Contractor shall be obliged to indemnify the Purchaser upon first request against any claims for damages by third parties and to take all measures necessary to the extent the cause for damage appears within the Supplier's sphere of control and organisation and the Supplier himself is liable vis-à-vis third parties.

- 9.4. In this respect, the Contractor shall also be obliged to reimburse the Purchaser for any expenses pursuant to §§ 683, 670 BGB or pursuant to §§ 830, 840, 426 BGB [German Civil Code] arising from or in connection with a recall action carried out by the Purchaser. The Contractor shall be informed of the content and scope of the recall measures to be carried out - insofar as this is possible and reasonable for the Purchaser - and shall be given the opportunity to comment.
- 9.5. The necessary notification of the respective competent authority in accordance with the provisions of the ProdSG shall be undertaken by the Purchaser in consultation with the Supplier/Contractor.
- 9.6. The Contractor undertakes to maintain a product liability insurance policy with an appropriate amount of cover - at least € 2m per claim for personal injury or damage to property - on a flat rate basis - which insures all risks from product liability including the risk of recall. The Contractor shall provide corresponding proof of insurance on request. Any further claims to compensation remain unaffected by this.

## **10. Property rights**

- 10.1. The Contractor warrants that his delivery item/service item within the scope of its intended use in further processing by the Purchaser fully complies with the applicable quality standards, is free from defects and does not endanger the rights and legal interests of third parties in Germany, or if he has been informed thereof, in the country of destination and can be used accordingly.
- 10.2. The contractor assures the observance of his legal duty to test and maintain product safety and undertakes to inform the purchaser immediately of any infringements of protective regulations.
- 10.3. If the Contractor has infringed property rights of third parties, he shall indemnify the Purchaser from all claims asserted against the Purchaser by third parties based on such an infringement. Each Party shall immediately inform the other in writing if claims on basis of an infringement of property rights are asserted against one of them.
- 10.4. The Contractor's obligation to indemnify shall also apply to all expenses which the Purchaser incurs as a result of or in connection with the claim by a third party as a result of a necessary recall action. The limitation period for these claims is 36 months, beginning with the passing of risk.
- 10.5. The Purchaser is not entitled to make any agreements with the third party - without the consent of the contractor - in particular to conclude settlements. The same applies accordingly to the Contractor.
- 10.6. If the contractual use of the delivery item/object of performance is adversely affected by third party property rights, the Contractor shall be obliged, without prejudice to its other contractual and statutory obligations and at its own expense, either to contact the party authorised to dispose over the property right and obtain from it the right for the delivery item/object of performance to be used in accordance with the contract, unrestrictedly and without additional costs for the Purchaser, or to modify those parts of the products/services concerned that are of relevance to the property rights in such a way that they no longer fall under the extent of protection but nevertheless correspond to the contractual provisions.

## **11. Implementation documents, tools, samples, articles**

- 11.1 All specifications, samples, production equipment, tools, profiles, measuring and testing equipment, materials provided, drawings, standard worksheets, printing templates, files, data/data records, software etc. surrendered to the Contractor by the Purchaser remain the property of the Purchaser. They must not be used by the Contractor for purposes outside the agreement, reproduced or made accessible to third parties, and must be kept by the Contractor with the care of a proper businessman free of charge and separately from other items in its possession, labelled as the Purchaser's property, kept absolutely secret and handed over to the Purchaser unasked after the order has been dealt with, and otherwise at the Purchaser's request.
- The approval of plans, implementation drawings etc. shall not affect the Purchaser's claims on account of defects. The Purchaser is exclusively entitled to all rights to the use of sketches, proposals, drawings or information of any kind.
- Articles produced according to the Purchaser's documents must neither be made accessible to, surrendered to or sold to third parties by the Contractor.
- 11.2. If the Purchaser orders parts from the supplier, the Purchaser reserves title to them. The processing or transformation of the material provided by the Purchaser takes place on behalf of the Purchaser, who immediately becomes the owner of the new or transformed item. If this should not be possible for legal reasons, the Purchaser and Contractor hereby agree that the Purchaser shall become the owner of the new item at any time during processing or transformation. The Contractor shall store the new item for the Purchaser free of charge and with the care of a proper businessman.
- 11.3. Moulds, tools, samples, printing templates etc. for which the Purchaser is charged shall pass into the Purchaser's ownership at the time of payment; they shall be stored by the Contractor for the Purchaser free of charge and must be handed over to the Purchaser on request.
- 11.4. The Contractor is obliged to have the objects provided by the Purchaser insured against fire, water and theft for at their replacement value at his

own expense. The Contractor shall be obliged to provide the Purchaser with proof of insurance upon request. The Contractor hereby assigns to the Purchaser all claims for compensation under this insurance. The Purchaser accepts the assignment.

the provision respectively shall continue to be effective.

## **12. Rights of use**

- 12.1 Unless otherwise contractually agreed, the Contractor shall grant the Purchaser the exclusive right of use of the work, which shall be unrestricted in terms of territory, time and content, under the following conditions, if
- the work is developed and/or produced or adapted exclusively for the Purchaser according to his ideas,
  - the Purchaser has an interest in being able to use the work exclusively, and
  - the work is not predominantly a standard product, which is usually also used by other customers of the Contractor in the ordinary course of business.
- 12.2. If parts of the work are already part of other works of the Contractor which are used by other customers of the Contractor in the ordinary course of business or if parts of the work can be used as part of other works in such a way that an exact or comparable copy of the work of the Purchaser is not avoided, the Contractor shall continue to be entitled to the right of use of these parts in the ordinary course of business. In this respect, the Purchaser shall receive the simple right of use of the work, which is unlimited in terms of space, time and content.
- 12.3. In all other respects, the Contractor shall grant the Purchaser at least a right of use of the work which is unlimited in terms of space, time and content, unless otherwise agreed in the contract.
- 12.4. The parties agree that no separate remuneration is to be paid by the Purchaser for the granting of the rights of use; rather, this is fully compensated for by the contractually agreed remuneration or included in the contractually agreed prices. The Contractor confirms that the agreed remuneration is reasonable within the meaning of § 32 UrhG [*German Copyright Act*] and, to the extent permitted by law, also takes into account all future types of use.

## **13. Privacy**

- 13.1. The Contractor undertakes to comply with the respectively valid data protection regulations. This applies in particular to compliance with the GDPR and the BDSG [*German Federal Data Protection Act*].
- 13.2. If, for example, it is intended or necessary to process personal data, the parties undertake to inform each other in good time and, if legally required, to conclude a data processing agreement in advance in accordance with Art. 28(3) of the GDPR.
- 13.3. The Contractor is obliged to make regular data backups to the required extent. He must also comply with the current technical and organisational requirements regarding information and data security. In particular, he must protect the systems to which he has access against unauthorised perusal, storage, modification and other unauthorised access or attacks of any kind by employees of the Contractor or other third parties. To this end, he shall take suitable measures to the necessary extent in accordance with the latest state of proven technology, in particular to protect against viruses and other malicious programmes or programme routines, and also other measures to protect his equipment, in particular to protect against burglary. If systems to which he does not have access are used, he shall impose corresponding obligations on his contractual partners and regularly monitor compliance with these obligations.

## **14. Compliance with standards, consideration**

- 14.1. Insofar as necessary, the Purchaser shall be entitled to verify compliance with all the above-mentioned obligations (standards) at any time, in particular compliance with data security requirements, by means of suitable measures (e.g. audits, spot checks, rights to inspect documents) after giving the Contractor reasonable notice. This also includes that the Contractor shall grant him access to his business facilities relevant for the audit, in particular the IT facilities, during his normal business hours. In doing so, the Purchaser shall of course give due consideration to the interests of the Contractor with regard to the secrecy of any confidential information.
- 14.2. The Contractor may refuse to such audits and checks only for good cause and only to the extent permitted by law. The Contractor shall bear the burden of proof for the good cause.

## **15. Place of performance, place of jurisdiction, choice of law, contractual language, miscellaneous**

- 15.1. Unless anything is agreed otherwise, the place of performance for the supplies / services is the place of destination stated in the purchase order.
- 15.2. If the Contractor is a registered trader, a legal person under public law or a special fund under public law, the place of jurisdiction shall be the Purchaser's registered office; however, legal action can also be taken against the Contractor at its general place of jurisdiction.
- 15.3. In addition, the law of the Federal Republic of Germany shall apply with the exclusion of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980.
- 15.4. The contractual language is German. Insofar as the parties to the agreement use another language alongside this, the German wording shall take priority.
- 15.5. If one provision of these Terms and Conditions or part of a provision should be or become ineffective, the remaining provisions or the remaining part of