

**TERMS & CONDITIONS OF PURCHASE OF**  
**HÜGLI NAHRUNGSMITTEL GMBH**  
Last revised October 2017

*This is a translated version from the original German version of the “Bezugsbedingungen” der Hügli Nahrungsmittel GmbH, last revised October 2017. If there are any differences between the understanding of these Terms & Conditions of Purchase and the German original version the latter prevails and is controlling.*

**1. Validity of the Terms and Conditions; General**

**1.1** These Terms & Conditions of Purchase shall apply exclusively to all business dealings between us and the supplier, seller, contractor or provider of works and services, hereinafter called Supplier, in addition to the other contractual agreements. Any general terms & conditions set out by the Supplier shall not apply unless expressly acknowledged by us in writing. These Terms & Conditions of Purchase shall also apply if we accept the goods or services in full knowledge of differing conditions.

**1.2** Any agreements or supplementary arrangements at variance with these terms must be set out in writing for the purposes of documentary evidence.

If we enter into a quality assurance agreement (QAA) with the Supplier, and if discrepancies and contradictions should arise between the arrangements set out in these Terms & Conditions of Purchase and in the QAA, the stipulations set out in the QAA shall apply as the more specific provisions.

**1.3** They shall also be valid for all future contracts without having to be expressly included until such time as revised Terms & Conditions of Purchase are issued.

**1.4** The Supplier shall be required to ensure that the products which it delivers in every case comply with the requirements laid down in all the EU food safety regulations, the German food regulations, especially the German Food, Commodities and Feed Code (*Lebensmittel-, Bedarfsgegenstände- und Futtermittelgesetzbuch - LFGB*), and with all the food legislation in force in the country of destination of the goods.

The Supplier shall be required to put contractual agreements and monitoring systems in place to ensure that any freight carriers, subcontractors and other firms instructed by the Supplier meet these requirements and comply with these laws and regulations.

The Supplier shall guarantee that the foods conform to the contractual agreements, are free of defects and duly comply with all the EU food safety regulations, all the German food regulations and all the food legislation in force in the country of destination of the end products.

**1.5** The Supplier shall be required to inform us in due time of any intention to make changes to products or processes in respect of the products purchased by us and must obtain written agreement from Hügli before following through with any changes in this regard. Otherwise Hügli shall be entitled to withdraw from the contract.

**2. Quotations and Related Correspondence**

**2.1** Purchase orders and agreements must be set out in writing at all times. Faxes and emails shall satisfy the requirement for written form as defined in these conditions. The same shall apply to any amendments, additions and supplementary agreements.

**2.2** The purchase order must be confirmed by the Supplier immediately and within not more than 10 working days of the order date.

**2.3** Any confirmation at variance with our purchase order shall be deemed to be a new quotation and shall be subject to our express written acceptance. If no such acceptance has been issued, and if the Supplier carries out the delivery or other service regardless, our acceptance of the same will be pursuant to the conditions of the order placed by us and pursuant to these Terms & Conditions of Purchase or we will reserve the right to return the relevant goods to the Supplier at the expense and risk of the latter.

**3. Delivery**

**3.1** The delivery/service dates and deadlines cited in the purchase order shall be binding. Adherence to the delivery dates shall be fundamental to the contract.

**3.2** The Supplier shall be required to give us immediate written notification if such circumstances arise or become evident to the Supplier as mean that the agreed delivery deadline cannot be met. Prior warning of any concerns must be sent to us by email or fax as soon as possible in advance, stating the reasons for the delay or default.

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**3.3** The Supplier may only claim that we failed to provide necessary documents if the Supplier did not receive these documents within a reasonable time despite issuing a written reminder.

**3.4** In case of failure to meet agreed fixed deadlines, we may withdraw from the contract and/or claim damages for breach of duty if the relevant statutory preconditions are met. The statutory regulations shall apply in all other respects.

**3.5** Goods must be delivered with the prescribed or contractually agreed declarations and labels. The additional labelling requirements for goods and shipping documents for Hügli are set out in our delivery specification. If our requirements are disregarded, we shall be entitled to refuse acceptance of the delivery. This shall also apply to deliveries to any third party named by us as the recipient.

**3.6** The arrangements for delivery shall be DDP (Delivered Duty Paid) as per INCOTERMS 2010, unless alternative arrangements have been agreed with the Supplier. We must be given advance notification of any special regulations for handling the goods, especially for unloading, transport and storage in our operational area. The Supplier shall be required to specify our purchase order information on all the shipping documents or delivery notes, exactly as set out in our delivery specification. We will not be responsible for any delays in processing operations arising as a result of the Supplier's failure to do this.

**3.7** The minimum shelf life of products shall be one of the properties defined in our specification agreements with the Supplier. The remaining term, i.e. the term available to Hügli for the processing and subsequent marketing of the products, calculated from the day following receipt of goods, must be at least 80% of the total duration of the agreed minimum shelf life (period between production and specified date), unless stipulated in individual agreements. Deliveries of goods which do not meet this requirement will be deemed to be defective.

**3.8** If we have specifically agreed to assume the costs, we will appoint the freight carrier. The goods must be declared on the waybill in such a way that the cheapest possible carriage rate is charged for the consignment. The Supplier shall notify us when the goods are ready for dispatch so that the transport can be arranged. In this case we will take out and pay for insurance for goods in transit. In this respect, we shall be exempt from forwarding and haulage insurance (so called *Verbotskunde*); the Supplier undertakes to inform the forwarding agent of our exemption if sending the goods through a forwarding agent. We will not assume any further insurance costs.

**3.9** We reserve the right to return bulky packaging containers, especially empty drums, barrels, crates, etc., to the Supplier free of transportation charges and to be credited for the same, regardless of any damage sustained in transit or other wear and tear. Our prior written consent shall be required for any handling arrangements not conforming to the regulations set out in the German ordinance on packaging currently in force (*Verpackungsverordnung - VerpackV*).

**3.10** The Supplier undertakes to meet the statutory regulations relevant to the delivery and transportation of hazardous substances.

**3.11** The acceptance of the delivery of additional volumes shall be strictly subject to our prior written confirmation.

**3.12** The Supplier must obtain our express written consent in order to be entitled to make part deliveries.

**3.13** If documents are required for the acceptance, operation, maintenance and repair of the goods supplied, especially test reports, factory certificates, drawings, plans, operating instructions and repair manuals, the Supplier shall be required to supply these documents free of charge in reproducible form.

**3.14** Incoming goods will be accepted solely during the opening times of our goods receiving department. Our goods receiving department is open at the following times:

Plant 1 at Güttingerstr. 23

- Monday to Thursday from 07:00 to 09:15 and from 09:45 to 15:15
- Friday from 07:00 to 09:15 and from 09:45 to 12:00

Plant 2 at Herrenlandstr. 76

- Monday to Thursday from 07:00 to 11:45 and from 12:45 to 15:15
- Friday from 07:00 to 12:00

Express deliveries scheduled to arrive outside the above opening times must be dropped off at our gate by special advance arrangement.

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## 4. Payment

**4.1** The price which we have specified in the purchase order shall be binding for the Supplier. Unless agreed otherwise in writing, the price shall apply to delivery DDP (Delivered Duty Paid) as per INCOTERMS 2010.

**4.2** The statutory value added tax must be shown separately on each invoice. Original invoices must not be enclosed with the shipment.

**4.3** We will only process invoices which are made out according to our instructions and our information in the purchase order. The Supplier shall be liable for all consequences of any kind whatsoever arising from the failure to comply with this duty. Invoices which do not meet our requirements (e.g. missing purchase order numbers) will be sent back to the Supplier by return. In this case the cash discount period shall not begin before the receipt of the amended invoice. All invoices issued by the Supplier must contain the VAT identification number of the Supplier.

**4.4** Unless agreed otherwise in writing, payments will be made with a 2% discount if made within 14 days of delivery and receipt of invoice or net if made within 30 days of delivery and receipt of invoice. The term of payment shall begin on receipt of invoice at the earliest, but not before receipt of the ordered goods. We will not acknowledge interest on late payments or restrictions of our right to refuse performance, right of retention and right of set-off. Our right to raise objections and our warranty claims against the Supplier shall remain unaffected by payments.

**4.5** We shall have statutory rights of set-off and retention to the extent set out in the relevant legislation.

## 5. Quality, Audits, Traceability

**5.1** We exclusively purchase food raw materials and foods which are produced under a certified quality control system – including HACCP plans and crisis strategies – and which are verified as compliant with Good Manufacturing Practice (GMP) regulations.

The Supplier shall ensure due conformity with IFS Version 6 (Food Defense).

**5.2** The Supplier and its sub-suppliers should be certified as conforming to IFS, BRC, DIN EN ISO 22000 and/or should have USDA approval.

The Supplier shall be required to submit the requisite and valid certificates to us without being asked in order to verify conformity with the above standards and to provide us with the names of all the relevant quality control contact persons including their current mobile telephone numbers and email addresses.

**5.3** We shall be entitled at any time during normal business hours and working times to carry out site visits and quality inspections (audits) on the premises and operating sites of the Supplier, with or without prior notice, or to arrange for said inspections to be carried out.

Audits for the systematic appraisal of the Supplier will be carried out regularly by arrangement with us, either by us or by inspectors instructed by us.

**5.4** The Supplier shall be required to ensure that the traceability of the goods supplied by the latter is duly guaranteed in relation to the origin of the products supplied in accordance with Regulation (EC) No 178/2002. The traceability must also be guaranteed at sub-suppliers of the Supplier according to these input requirements.

The Supplier shall retain samples of the batches of the goods to be supplied by the latter, in due compliance with the statutory requirements and according to a plan to be discussed and agreed with us, which we shall be authorised to access.

## 6. Claims for Defects and Damages

**6.1** We shall be fully entitled to statutory claims for defects and damages.

**6.2** We will inspect the goods on delivery to the incoming goods section, checking for obvious defects only and for damage sustained to the outer packaging in transit. Notification of defects shall be deemed to have been submitted in due time if any defect is reported to the Supplier within 10 working days of its discovery. In this respect, the Supplier shall waive the right to claim late notification of defects. In case of transit goods, the decisive factor shall be the customer's complaint. In justified cases of complaint, Hügli reserves the right to charge the Supplier for the costs of inspection and notification of defects. The Supplier shall bear the expense and risk of the return of faulty goods.

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## 6.3

**6.3.1** Any items sold to us by the Supplier must be delivered free of material defects and deficiencies in title.

### 6.3.2

The Supplier shall guarantee that the delivered goods including their packaging meet the statutory and agreed quality and packaging standards, the specifications, the performance requirements, the customary usage in the trade (especially the guidelines set out in the German Food Code (*Deutsches Lebensmittelbuch*)) and, in the absence of such, at least the customary quality standards, and that they have been made in faultless conditions, treated with the requisite duty of care, and subjected to the required hygiene and quality control inspections.

**6.3.3** If an order or contract is based on a quality sample which we have approved, the Supplier shall be required to match the quality and composition of this sample in all the deliveries of goods. The goods shall be delivered in this case with the guarantee that they possess the properties of the quality sample.

**6.3.4** In addition to the warranties pursuant to paragraphs 6.3.2 and 6.3.3 and irrespective of the claims arising herefrom, the Supplier shall also guarantee the properties and features of the goods agreed in paragraphs 6.3.2 and 6.3.3.

**6.4** The Supplier shall accept responsibility for the goods delivered, pursuant to the statutory provisions, duly confirming that they pose no risk to health in case of designated and foreseeable use and that the goods have no harmful physiological effects.

**6.5** The Supplier shall further warrant, pursuant to the statutory provisions, that the distribution of the delivered goods and/or the use of the contractual service does not entail a breach of applicable statutory regulations, especially in the country of manufacture, processing, distribution and end use (including the packaging and labelling regulations), or an infringement of third-party rights, and/or that the goods comply with requirements under public law or competition law.

Existing and/or enclosed labels about properties/features, shelf life, names, descriptions, shipping documents and/or advertising claims, directions for use and assembly instructions must be accurate as regards content, legally correct, complete, intelligible, and written in **German**.

**6.6** In case of a defect, we may choose to have the defect remedied or to be supplied with an item free of defects or a credit note. After a reasonable period for supplementary performance has elapsed without result, we may rectify the defect ourselves and claim reimbursement for the expense incurred. This shall not apply if the Supplier is justified in refusing supplementary performance. Further statutory rights shall remain unaffected.

**6.7** If the Supplier refuses to effect supplementary performance, without being entitled to do so under section 439 (3) of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*), or if the attempt at rectification should fail, we shall be entitled to rectify the defects at the Supplier's expense immediately, even before the end of the period for supplementary performance which we have set, duly reserving the right to claim damages for breach of duty.

We shall further be entitled to rectify the defect ourselves or to have the defect rectified at the expense of the Supplier insofar as we are under such time pressure that it is no longer possible for us to inform the Supplier of the defect and of the imminent loss and to allow the latter time, albeit a short amount of time, to remedy the situation.

**6.8** The Supplier shall be liable to bear all the costs required for supplementary performance, especially transport costs, travel expenses, labour and materials, even if said costs increase due to the fact that we have moved the purchased item to a location other than the place of performance.

**6.9** Claims for defects and damages shall be subject to a period of limitation of 36 months from delivery, unless longer contractual or statutory periods of limitation should apply.

If in the course of supplementary performance, a defect free product is supplied, the period of limitation for claims for defects shall begin again after delivery of the product free of defects but, in the case of rectification of defects, only in respect of the rectified part.

**6.10** The provisions set out above in paragraphs 6.1 to 6.9 inclusive shall apply analogously to services provided by the Supplier, especially business and consultancy services.

## 7. Product Liability/Hold Harmless Agreement/Purchase of Insured Products

**7.1** If the Supplier is responsible for damage to a product, the Supplier shall indemnify and hold us harmless from and against any third-party claims for damages. In cases of fault-based liability, however, this shall not apply insofar as fault cannot be attributed to the Supplier.

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**7.2** Paragraph 6.1 shall apply analogously insofar as we have recourse claims against the Supplier under section 478 of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*). In this case the Supplier hereby assigns to us in advance any recourse claims against its own suppliers by way of security for our recourse claims. We hereby accept the assignment.

**7.3** The Supplier shall be required to compensate expenses and damages incurred by any product recall or withdrawal carried out to prevent bodily injury or property damage caused by the defect of the products delivered or of the services or work performed. We will reach an understanding with the Supplier – where possible and reasonable – as to the content and scope of the product recall. The Supplier shall be given an opportunity to issue a statement in response.

**7.4** The Supplier undertakes to maintain commercial and product liability insurance with a sum insured of at least € 5 million for bodily injury and the same for property and product damage, as well as a general recall cost insurance to cover product recall costs with a sum insured of at least € 2 million in any given case, and to inform us immediately of any cancellation of these insurance policies. The scope of product liability insurance must extend to the forms of cover for the so-called extended Product Liability Insurance including the insurance of bodily injury and property damage due to the lack of agreed properties of the delivered products, to damage on account of incorporating, mixing or processing the supplied product, to damage on account of the further processing of the supplied product, costs of dismantling and installation, reject products by machines, together with inspection and sorting costs. The cover must also extend to damages in foreign countries.

**7.5** The Supplier shall agree with its insurance provider for the insurance and for confirmation of the non-detrimental effect on the insurance coverage regarding the inspection and complaints procedure pursuant to paragraph **6.2** of these conditions; the warranty period extension pursuant to paragraph **6.9** of these conditions and regarding the indemnification and hold harmless obligation pursuant to paragraph **7.1** of these conditions under its commercial and product liability insurance and regarding the obligation for maintaining a product recall costs insurance in addition to its commercial and product liability insurance. pursuant to paragraph **7.3** of these conditions The Supplier shall furnish us with confirmation from the insurance provider on the above extent of coverage (certificate of insurance) by no later than the first delivery or service.

### **8. Property Rights**

**8.1** The Supplier shall guarantee that no rights of third parties, especially of its subcontractors, are infringed in connection with its supplies and services and shall indemnify and hold us harmless from and against any third-party claims insofar as the Supplier is responsible for the infringement of property rights.

**8.2** Even if the Supplier holds industrial property rights, we shall still be permitted to use and/or exploit the delivered goods.

**8.3** If third-party property rights are infringed and if, as a result, we may not use and/or exploit the delivered goods and/or the manufactured work in full or in part, the Supplier shall either furnish us with right of use and/or exploitation at its expense or shall choose to render the goods or services free of protected rights. This shall not affect further statutory rights.

**8.4** The above agreements shall apply analogously to other services provided for us by the Supplier, e.g. under contracts for work or services.

### **9. Reservation of Title/Consignments; Copyright**

**9.1** Insofar as we consign equipment to the Supplier and/or provide the Supplier with diagrams, drawings, calculations, specifications, data, data carriers, terms of reference, statements of requirements or other documents, we shall retain title and copyright to said items. All items subject to reservation of title are to be returned to us without further request after the purchase order has been processed. The processing or alteration of the items subject to reservation of ownership by the Supplier shall always be carried out on our behalf.

**9.2** If an item subject to reservation of title is processed with items not belonging to us, we shall acquire a share in ownership of the new item as determined by the invoice value of the item subject to reservation of title in proportion to the invoice value of the other items at the time of processing. If an item subject to reservation of title is inextricably combined with items not belonging to us, we shall acquire joint ownership of the new item or single entity as determined by the invoice value of the item subject to reservation of title in proportion to the invoice value of the other items. In this case, the Supplier shall hold the joint ownership for us. If our security interests exceed the purchase price of all the goods subject to reservation of title that are as yet unpaid by more than 20%, we will release a corresponding portion of the security interests at the request of the Supplier.

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**9.3** The Supplier shall be required to notify us immediately of any damage or loss of items subject to reservation of title. The Supplier shall be liable to us for loss and/or damage pursuant to the statutory provisions.

**9.4** The Supplier shall be required to insure items belonging to us at replacement value at its own expense, taking out property insurance with the greatest possible extent of cover (all-risk coverage, extended coverage).

**9.5** We will not acknowledge any extension or prolongation of reservation of title extending beyond the Supplier's standard legal reservation of title to the unprocessed products supplied by the latter and stored on our premises, especially after processing, combining or mixing with other goods and after sale of the relevant product.

### **10. Confidentiality**

**10.1** The parties to the contract undertake to keep all aspects of the business relationship confidential, pledging in particular not to disclose any commercial and technical particulars which are not common knowledge and to which they become privy through the business relationship, and to treat such information as trade secrets. The duty of confidentiality shall not extend to information or aspects of the business relationship which were already in the public domain at the time of their disclosure and to such information or aspects of the business relationship to which the Supplier was evidently already party before our disclosure of the information.

Our documents may only be made available to the persons who carry out our order. The Supplier shall ensure that its employees also safeguard our legitimate confidentiality interests.

**10.2** The Supplier shall also remain subject to the duty of confidentiality after the end of the business relations. All items made available by us are to be returned to us after refusal or completion of the order.

**10.3** Permission to copy the items made available to the Supplier shall be strictly subject to operational requirements and copyright laws.

**10.4** All the information relating to our business relationship is not intended for third-party consumption. Any disclosure of our contract or part thereof to third parties shall be strictly subject to our prior written consent; the Supplier shall likewise impose a duty of confidentiality on the third parties under a similar agreement. The Supplier may only make reference to our business connection in advertisements subject to prior written consent.

**10.5** Any items which we lend to the Supplier shall remain our property. Items which are made on our instructions shall become our property. These items may only be delivered to third parties subject to prior written consent.

**10.6** Orders may not be subcontracted to third parties without our consent. We shall be entitled in this case to withdraw from the contract and claim damages.

**10.7** The Supplier undertakes not to conclude direct or indirect transactions with our customers which relate to the ordered item.

**10.8** Products relating to our purchase order which are not of a general specification but are intended for a specific application may not be delivered to third parties.

### **11. Remuneration; Data Protection**

**11.1** Unless agreed otherwise in writing, we will not provide payment or reimbursement for visits or for the preparation of quotations, projects, plans, etc. if we do not place a purchase order.

**11.2** The supplier agrees that we store the data required by the supplier and the contracts concluded with him in the course of the business relationship via EDP and only use it for our own purposes within our Group-linked companies.

### **12. Severability**

Should individual clauses in these Terms & Conditions of Purchase or individual clauses in other agreements be or become invalid, this shall not affect the validity of all the other clauses or agreements. Invalid or omitted clauses shall be replaced by valid clauses which most accurately equate to the relevant statutory provisions and most closely reflect the intended commercial outcome.

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## **13. BSCI Code of Conduct**

We are committed to the observance of accepted social standards in the production of goods and commodities along the supply chain. We therefore ask you to take notice of the rules and standards published by the BSCI, as amended (available at <http://www.bsci-intl.org/content/bsci-code-conduct> ) and to adopt the relevant standards and apply the criteria applicable in your field and within your control.

## **14. Foreign Trade Legislation**

The Supplier (contractor) shall be required, on our request, to name the country where the goods were produced and to provide the certificates of origin required for export.

The Supplier shall be liable for the accuracy of the information provided.

If we do not receive a required export permit, we shall be entitled to withdraw from the contract.

In this case the Supplier shall be required to refund our costs and compensate us for the damages incurred insofar as the latter is responsible for the non-issue of the export permit.

## **15. Applicable Law, Place of Performance, Place of Jurisdiction**

**15.1** These terms and conditions of business and all legal relations between the parties shall be governed by the law of the Federal Republic of Germany, including the provisions set out in the United Nations Convention on Contracts for the International Sale of Goods adopted on 11.04.1980 (CISG - "Vienna Convention").

**15.2** Our registered place of business shall be the place of performance for deliveries and payments.

**15.3** Radolfzell shall be the place of jurisdiction for all legal disputes, including in proceedings relating to claims arising from bills of exchange or cheques, insofar as the Supplier is a merchant. We shall also be entitled to take legal action at the Supplier's place of business.