

## 1. Definitions

**Agreement** means a Confirmed Order and/or agreement between Supplier and Buyer for the sale and purchase of Supplies;

**Background IP Rights** means any and all IP Rights that are owned by (or licensed to) either party and which are or have been created or developed independently of the other party. In respect of Supplier, this includes, without limitation, manufacturing processes, base recipes and/or specifications, which Supplier has developed independently of Buyer;

**Buyer** means the company, partnership or person placing an Order for Supplies;

**Code** means Supplier's code of conduct located at:

[https://www.abf.co.uk/documents/pdfs/policies/supplier\\_code\\_of\\_conduct.pdf](https://www.abf.co.uk/documents/pdfs/policies/supplier_code_of_conduct.pdf) or otherwise provided to Buyer by Supplier;

**Confirmed Order** means an Order which has been accepted or is deemed accepted by Supplier in accordance with Condition 3.2;

**Delivery** means delivery of Supplies in accordance with Condition 8.1.1.

**Delivery Point** means the unloading point at the address stated in the Agreement or such other address as is agreed between the parties in writing;

**Event of Force Majeure** means any circumstances beyond the control of a party including, but not limited to, acts of God, governmental actions, changes in or the coming into force of legislation, including sanction laws, strikes or other labour disputes, lock-outs, accidents, war or national emergency, acts of terrorism, protests, riot, civil commotion, explosion, flood, adverse weather conditions, epidemic, fire, reduction in or unavailability of power, telecommunication disruptions, breakdown, stoppage, slow working or reduced efficiency of plant or machinery, restraints or delays affecting carriers, shortage or unavailability of raw materials from normal sources of supply;

**Insolvency Event** means circumstances in which a party is unable to pay its debts, becomes insolvent or enters into liquidation or receivership, or suffers any event analogous to any of the above;

**IP Rights** means patents, rights to inventions, trademarks, rights in confidential information (including, without limitation, know-how and trade secrets), copyright, design rights and all similar or related intellectual property rights existing anywhere in the world, whether registered or not and including, without limitation, any applications for the same;

**Loss** means any loss, claim, liability, expense or damage suffered or payable whether arising directly or indirectly;

**Order** means Buyer's order or any other written instruction placed by Buyer for Supplies;

**Supplier Affiliates** means Associated British Foods plc ("ABF") and any subsidiary of ABF, from time to time, and "subsidiary" shall have the meaning given in Sec. 15ff. of the German Stock Corporation Act [AktG];

**Supplies** means goods (or any instalment or part of them), together with any ancillary services, to be supplied under the Agreement; and

**VAT** means value added sales tax payable in Germany or any similar sales tax.

## 2. Application of these Conditions

2.1. These Conditions apply only in relation to a Buyer who is an entrepreneur (Sect. 14 of the German Civil Code [BGB]), legal entity under public law or special fund under public law.

2.2. These Conditions apply exclusively and therefore they are the only terms and conditions upon which Supplier is prepared to deal with Buyer and they shall govern and are incorporated into the Agreement and any other agreement and/or Order relating to the sale and purchase of Supplies. They apply to the exclusion of and prevail over all other terms and conditions which Buyer may purport to apply, impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. This shall apply in any

case, even if Supplier, being aware of Buyer's general terms and conditions, allows the performance/delivery of Supplies to be carried out without reservation.

## 3. Orders

3.1. Each Order shall be deemed to be an offer by Buyer to purchase Supplies and is subject to acceptance by Supplier. Buyer is responsible for ensuring the accuracy and completeness of any Order.

3.2. Any quotation by Supplier does not constitute an offer and Supplier reserves the right to withdraw or revise a quotation at any time prior to Supplier's acceptance of Buyer's Order.

3.3. No Order shall become a Confirmed Order unless and until:

3.3.1. Supplier has accepted such Order in writing; or

3.3.2. Supplier has dispatched the Supplies for Delivery or made the Supplies available for collection.

3.4. Buyer may not cancel any Confirmed Order except with the prior written agreement of Supplier.

## 4. Prices

4.1. Unless otherwise agreed in writing, the price payable for the Supplies shall be:

4.1.1. as set out in the Agreement;

4.1.2. in the case of any Delivery of Supplies by instalments, Supplier's pricing at the date of despatch of the relevant instalment;

4.1.3. inclusive of costs relating to packaging, loading, unloading, carriage, insurance, transport. Supplier may charge Buyer for the additional cost of returnable containers and bags but full credit will be given to Buyer if returned undamaged;

4.1.4. exclusive of VAT and any other taxes and duties that are payable in respect of the Supplies, which Buyer shall be liable to pay to Supplier.

4.2. Notwithstanding Condition 4.1, Supplier reserves the right, at any time before Delivery of Supplies, to increase the price of such Supplies in order to account for proven increases in Supplier's costs to produce and/or supply Supplies, including without limitation any increased costs of raw materials, utility costs, energy costs, transportation costs, exchange rate fluctuations and any other cost increases. Supplier shall inform Buyer of any such price increases prior to delivery of the relevant Supplies.

## 5. Additional costs

5.1. Buyer shall indemnify Supplier in respect of any Loss incurred by Supplier as a result of:

5.1.1. Buyer's instructions or lack thereof;

5.1.2. any failure or delay by Buyer in taking or accepting Delivery of Supplies in accordance with the Agreement; or

5.1.3. infringement or alleged infringement of any third-party IP Rights where Supplies are made to any other specific instructions of Buyer.

## 6. Terms of payment

6.1. Unless otherwise agreed in writing:

6.1.1. Supplier shall be entitled to invoice Buyer for the price of the Supplies at any time following acceptance of the Order.

6.1.2. Buyer will pay for Supplies in € Euro no later than 28 days from the date of invoice. Time for payment shall be of the essence.

6.2. Buyer shall make all payments due under the Agreement in full to Supplier's account as notified to Buyer without any deduction, whether by way of set-off or otherwise.

6.3. If Buyer fails to make any payment on the due date (or exceeds the limit on any payment account agreed with Supplier), then without prejudice to any other right or remedy available, Supplier shall be entitled to:

6.3.1. suspend further deliveries of Supplies (as well as other supplies under any other agreement) until Buyer has paid the overdue amount in full; and

6.3.2. charge interest on any overdue amount at the statutory rate for late payments under German law. Interest will accrue on a daily basis from the due date until payment is

made.

6.4. Buyer can only offset against invoiced claims of Supplier if the counterclaim is undisputed or if a legally binding title in Supplies exists. Buyer may only assert a right of retention insofar as it is based on claims from the Agreement.

## 7. Intellectual property

7.1. Neither party shall have, gain title to (nor have nor gain any licence to use or modify) the other party's Background IP Rights. Neither party shall do or permit any act which may indicate that it has any right, title or interest in the other party's Background IP Rights.

7.2. Unless otherwise agreed in writing, all IP Rights in Supplies and related documentation shall belong to Supplier.

7.3. When using the Supplies, Buyer must take into account all existing industrial property rights (in particular patents and trademarks). Many of the Supplies are marked with one of Supplier's trademarks. If these goods are processed, the use of Supplier's trademark in connection with the manufactured end-product is only permissible if Supplier's prior written consent has been obtained. This applies to all processing stages.

## 8. Delivery and returns

8.1. Unless otherwise agreed in writing:

8.1.1. Supplies will be delivered CPT (Incoterms® 2020) at the Delivery Point;

8.1.2. where required, Buyer will provide access to the Delivery Point together with adequate equipment and labour for taking Delivery of Supplies.

8.2. Delivery dates are non-binding unless Supplier has designated them as binding in writing. Supplier shall use its reasonable endeavours to meet Buyer's requested Delivery timings but reserves the right to vary such timings. Supplier will not be liable for loss or damages arising from delay in delivery. Supplier is entitled to make partial deliveries.

8.3. Supplies may not be returned without Supplier's prior written authorisation and, if authorised, the Supplies must be unused and returned (at Buyer's expense) in their original packaging to such address as Supplier directs.

## 9. Passing of risk and title; retention of title

9.1. Unless otherwise agreed in writing, risk in the Supplies shall pass to Buyer upon Delivery to the Delivery Point and title to Supplies shall only pass when Supplier has received full payment for the Supplies and for any other proper claims arising out of the business relationship with Buyer (including any outstanding invoices).

9.2. Until title to Supplies has passed to Buyer, Buyer will:

9.2.1. be entitled to possession of the Supplies only;

9.2.2. safely store the Supplies, maintaining them in satisfactory condition;

9.2.3. ensure that the Supplies remain readily identifiable as Supplier's property and not remove, deface or obscure any identifying mark or packaging;

9.2.4. insure the Supplies against all risks for their full price from the date of Delivery;

9.2.5. give Supplier such information as it may reasonably require from time to time in relation to (i) the Supplies and (ii) the ongoing financial position of Buyer.

9.3. Notwithstanding Condition 9.2, Buyer may process or resell Supplies in the ordinary course of its business. Buyer hereby assigns to Supplier all claims in the amount of the final invoice amount (including VAT) of Supplier's claims to which Buyer is entitled from the resale against its customers or third parties, irrespective of whether the Supplies have been resold without or after processing. Supplier's retention of title also extends to the products resulting from processing. If Supplies are processed, combined or mixed with material which does not belong to Supplier, Supplier shall acquire co-ownership of the resulting products in the ratio of the value of Supplier's goods to the third-party goods. In such cases, Supplier shall be deemed to be the manufacturer, without

any obligation on Supplier's part, and Buyer shall be deemed to be the custodian for Supplier in this respect. Buyer is permitted to collect the claim assigned to Supplier as long as Buyer fulfils his obligations towards Supplier and does not suffer a loss of assets. Supplier's authority to collect the claim himself remains unaffected by this. Supplier shall not collect the claim as long as Buyer meets his payment obligations from the proceeds collected, does not default in payment and, in particular, has not filed for insolvency proceedings or suspended payments. At Supplier's request, Buyer shall provide Supplier with the information required for collection and notify the debtor of the assignment. Nothing in this Condition 8.3 gives Buyer any right to return the Supplies or refuse or delay payment for them. Such rights to process or resell the Supplies shall automatically terminate or suspend on the termination or suspension of the Agreement. Where Supplier is unable to determine the location of any Supplies in respect of which Buyer's right to possession has terminated, Buyer shall be deemed to have sold all Supplies of the kind sold by Supplier to Buyer in the order in which they were paid for by Buyer.

9.4. Supplier undertakes to release the securities to which Supplier is entitled at the request of Supplier insofar as the realised value of Supplier's securities exceeds the claims to be secured by more than 10%. The selection of the securities to be released is incumbent upon Supplier.

9.5. Insofar as the retention of title exists, Buyer may not assign or pledge Supplies subject to retention of title or goods manufactured therefrom to a third party as security without Supplier's written consent. In the event of seizures and other interventions by third parties, Buyer must inform Supplier immediately in writing.

9.6. Buyer grants to Supplier an irrevocable licence to enter premises where Supplies are stored on reasonable prior notice in order to inspect them or, if Supplier becomes entitled to terminate the Agreement in accordance with Condition 12, to recover them.

## 10. Warranties and Representations

10.1 The basis of Supplier's liability for defects is, above all, the agreement set out in the Agreement, which shall be - insofar as nothing to the contrary has been expressly agreed - Supplier's official product specification in the form current from time to time. Other technical descriptions or information in offers, brochures or advertising materials from Supplier or Supplier's agents are initially non-binding and shall only become part of the Agreement if expressly referred to therein. Insofar as Supplier has agreed with Buyer on a quality to be delivered in respect of the Supplies ("Quality"), objective requirements for the Supplies shall not apply. Insofar as a specific Quality has not been so agreed, it shall be assessed in accordance with the statutory regulation as to whether a defect exists or not (§ 434 para. 3 German Civil Code [BGB]).

10.2 Supplier warrants that at the time of despatch, the Supplies will:

10.2.1 conform in all material respects with any specification in the Confirmed Order; and

10.2.2 comply with applicable statutory and regulatory requirements in Germany.

10.3 Buyer shall solely bear the risk of processing the goods. While Supplier shall use reasonable efforts to ensure that goods are manufactured to the agreed specification, the decision on the suitability of the goods for a specific application is the responsibility of Buyer and/or the respective user. Supplier is not obliged to render advice on applications of Supplier's goods. In the event, however, that employees or agents of Supplier render any advice on applications - including matters relating to any third party industrial property rights - such advice is rendered without legal obligation and shall not release Buyer from his

- obligation to test Supplier's goods and assess for himself their suitability for Buyer's purposes. Supplier accepts no liability for misuse of the goods or failure to carry out statutory and contractual obligations by Buyer or other third parties.
- 10.4 If any Supplies do not conform with the warranty given in Condition 10.1, Supplier shall, at its option, repair or replace the defective Supplies, or refund the price of the defective Supplies in full. This is conditional on:
- 10.4.1 Buyer giving written notice to Supplier of the alleged defect in the Supplies, such notice to be received by Supplier within three days of the time when Buyer discovers the defect and in any event within three months of Delivery of such Supplies;
- 10.4.2 Buyer affording Supplier a reasonable opportunity to inspect and/or examine the Supplies;
- 10.4.3 Buyer making no further use of the Supplies after discovering the alleged defect, unless Supplier has given written authorisation to continued use;
- 10.4.4 the Supplies having been used and stored in accordance with the instructions issued by Supplier or in accordance with general trade practice;
- 10.4.5 the Supplies having not been altered by Buyer or any third party; and
- 10.4.6 the defect or non-compliance not arising as a result of Supplier following any requirement(s) or specifications of Buyer.
- 10.5 If subsequent performance (*Nacherfüllung*) fails, is refused by Supplier or is not carried out within the reasonable period set by Buyer, Buyer may, without prejudice to any claims for damages, reduce the remuneration or withdraw from the Agreement insofar as Supplier is responsible for the material defect. Supplies returned to, and replaced by, Supplier shall become Supplier's property.
- 10.6 In the event of entrepreneurial recourse (§ 445a German Civil Code [BGB]), it shall be presumed that there were no defects at the time of the transfer of risk to Buyer if Buyer has dutifully inspected the goods in accordance with this condition 10 but has not notified any defects, unless this presumption is incompatible with the nature of the item or the defect. If Buyer asserts recourse claims, he must allow himself to be treated towards Supplier as if he had implemented all legally permissible contractual options towards his contractual partner (e.g. refusal of subsequent performance due to disproportionality or limitation of the reimbursement of expenses to a reasonable amount). Supplier is entitled to reject any of Buyer's claims for recourse for defective goods with the exception of requests for new delivery of repaired or replaced goods, provided that Supplier grants Buyer equivalent compensation for the exclusion of his rights. Supplier shall only be liable for compensation for consequential damage caused by a defect if Supplier is (jointly) responsible for the occurrence of the defect due to intentional or grossly negligent conduct. However, such recourse claims only exist insofar as Buyer has not made any agreements with his customer that go beyond the statutory claims for defects. Claims from entrepreneurial recourse are excluded if the defective goods have been further processed by Buyer or another entrepreneur, e.g. by incorporation into another product. The provisions of condition 14. shall apply to the extent of the recourse claims.
- 10.7 Claims by Buyer for losses (*Aufwendungsersatz*) pursuant to Section 445a (1) German Civil Code [BGB] shall be excluded unless the last contract in the supply chain is a consumer goods purchase (Sections 478, 474 German Civil Code [BGB]) or a consumer contract for the provision of digital products (Sections 445c sentence 2, 327 (5), 327u German Civil Code [BGB]). Claims of Buyer for damages (*Schadenersatz*) or losses (*Aufwendungsersatz*) (Section 284 BGB) shall also exist in the event of defects of the goods only in accordance with the following Condition 13.
- 10.8 Except as provided in this Condition 10, Supplier shall have no liability to Buyer in respect of Supplier's failure to comply with the warranties set out in this Condition 10.
- 11 Recall and/or withdrawal of Supplies**
- 11.1 Buyer will maintain up-to-date and accurate records to enable the prompt withdrawal or recall of Supplies from the market.
- 11.2 Each party shall notify the other immediately upon becoming aware of any court order or other directive of a governmental or regulatory authority to withdraw or recall Supplies from the market ("**Recall Notice**").
- 11.3 Buyer will notify Supplier of any circumstances which indicate that Supplies that are available for sale in the market are defective, faulty, unsafe or otherwise non-compliant with applicable law ("**Defect Notice**").
- 11.4 Buyer will reasonably cooperate with, and assist Supplier in relation to any Recall Notice and/or Defect Notice and/or in relation to any other circumstances where Supplier has notified Buyer that it wishes to withdraw or recall Supplies from the market, including, without limitation:
- 11.4.1 following Supplier's instructions concerning the withdrawal and/or recall of Supplies from the market;
- 11.4.2 providing Supplier with such information that it reasonably requires in connection with the Supplies to which the recall or withdrawal relates; and
- 11.4.3 issuing to Buyer's customers any notifications from Supplier that relate to the manner of use, operation or safety of the Supplies.
- 11.5 Subject to applicable law, Buyer will not:
- 11.5.1 carry out a recall or withdrawal of any Supplies without Supplier's prior written consent, failing which any such recall or withdrawal undertaken without Supplier's consent shall be at Buyer's own risk; or
- 11.5.2 publicise, share or issue any information, correspondence, communications or other materials relating to the recall or withdrawal.
- 12 Termination or cancellation**
- 12.1 Supplier may terminate the Agreement or suspend performance under it (and/or terminate or suspend performance under any other agreement for supplies) with immediate effect and without liability by giving written notice to Buyer if:
- 12.1.1 Buyer commits a material breach of any term of the Agreement and (if such breach is remediable) Buyer fails to remedy that breach within 14 days of being notified to do so;
- 12.1.2 Buyer fails to pay any amount when properly due under the Agreement; and
- 12.1.3 Buyer suffers an Insolvency Event.
- 12.2 Buyer shall not be entitled to cancel any Confirmed Order, whether by reason of any act, omission or default on the part of Supplier or otherwise.
- 12.3 On termination of the Agreement for any reason, all outstanding amounts under the Agreement will become due and payable by Buyer from the date of termination.
- 12.4 Termination of the Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Conditions which expressly or by implication survive the termination of the Agreement shall continue in full force and effect.
- 13 Limitation of liability**
- 13.1 Claims for damages and reimbursement of expenses by Buyer (hereinafter "Claims for Damages"), irrespective of the legal grounds, in particular due to breach of obligations arising from the contractual obligation and from tort, shall only exist if Supplier or Supplier's vicarious agents have acted with intent or gross negligence. In the event of other negligence ("slight negligence" – *leichte Fahrlässigkeit*), Supplier shall only be liable for the breach of material contractual obligations (as defined below). In the event of a breach of a material contractual obligation, liability shall be limited to the respective net purchase price of the relevant Supplies. In this context, a material contractual obligation (*Kardinalpflicht*) is an obligation the fulfilment of which makes the proper performance of the Agreement possible in the first place and the observance of which the contractual partner regularly relies on and may rely on. In any case, in the event of slight negligence, liability for unforeseeable damage, indirect damage not relating to the delivered goods, consequential damage caused by defects, loss of profit and financial loss shall be excluded. This shall also apply in the event of a grossly negligent breach by simple vicarious agents (i.e. not legal representatives or executive employees).
- 13.2 Liability for injury to life, limb and health which is based on an intentional or negligent breach of duty by Supplier, one of Supplier's legal representatives or vicarious agents is expressly not excluded.
- 13.3 If Supplier has fraudulently concealed defects or has given guarantees irrespective of fault, the aforementioned limitation of liability shall also not apply. Mandatory claims under the Product Liability Act [Produkthaftungsgesetz] are also not excluded.
- 13.4 Any further liability for damages is excluded. Insofar as liability for damages against Supplier is excluded or limited, this shall also apply with regard to the personal liability for damages of employed workers, employees, representatives and vicarious agents of Supplier.
- 13.5 In the case of § 438 para. 1 no. 3 German Civil Code [BGB], claims for defects of Buyer shall become statute-barred within one year from the statutory commencement of the limitation period, unless Supplier has acted fraudulently. Claims under a right of recourse pursuant to Section 445b para 1 of the German Civil Code [BGB] shall become statute-barred within one year of delivery. The suspension of the statute of limitations according to Section 445b para. 2 German Civil Code [BGB] remains unaffected and ends at the latest five years after delivery. The aforementioned provisions on the limitation of recourse claims and on the suspension of expiry shall not apply if the last contract in the supply chain is a consumer goods purchase. The limitation period for claims for damages not resulting from claims for defects shall also be one year from delivery.
- 14 Force Majeure**
- Save for Buyer's obligation to pay for Supplies, neither party shall be liable under the Agreement for any delays or failures in performance of the Agreement which result from an Event of Force Majeure. The party subject to an Event of Force Majeure shall notify the other party in writing when such event causes any such delay or failure. The time for performance of an obligation which is affected by an Event of Force Majeure shall be extended by such period that reflects the delay caused by the Event of Force Majeure. If the Event of Force Majeure continues for more than 30 days, either party may terminate the Agreement and/or the relevant Confirmed Order by giving written notice to other.
- 15 Ethical Standards and Sanctions Compliance**
- 15.1 In recognition of the parties' commitment to ethical and sustainable business practices:
- 15.1.1 the parties shall comply with applicable laws, including all economic and/or trade sanctions laws, regulations and any other binding measures of the Germany, European Union, the United Nations, UK, the United States of America or any other jurisdiction applicable to the parties;
- 15.1.2 Buyer will comply with (i) the Code or (ii) its own codes and policies relating to ethical standards and sustainability, which Buyer hereby confirms are aligned with, and meet the standards set out in, the Code, and will have measures in place to monitor and ensure compliance with this Condition 15.1.1.
- 16 Miscellaneous**
- 16.1 A waiver of any right or remedy under the Agreement is only effective if granted in writing, and if so granted shall not be deemed a waiver of any subsequent or other breach or default.
- 16.2 No variation to these Conditions shall be valid or effective unless it is made in writing, refers to these Conditions and is duly signed or executed by, or on behalf of, each party.
- 16.3 Each party acknowledges that it may have access to confidential information relating to the business or affairs of the other party. Each party specifically agrees that it will keep confidential and will not use for any purpose other than the performance of (or the exercise of rights in respect of) the Agreement (as applicable), and will not, subject to Condition 16.3 and 16.4, without the prior written consent of the other, disclose, directly or indirectly, to any third party, any such confidential information.
- 16.4 Supplier may disclose confidential information received from Buyer to Supplier Affiliates, relevant service providers and professional advisors, under conditions of confidentiality.
- 16.5 Nothing prevents use or disclosure by either party of information which is already in the public domain (other than due to default of such party) or which such party acquires independently of the other party and without restriction on disclosure or use, or prevents disclosure to the extent required by law or regulation.
- 16.6 If any provision of the Agreement is held to be invalid or unenforceable it shall, to the extent of such invalidity or unenforceability be deemed severable and the remaining provisions, and the remainder of such provision, shall continue in full force and effect.
- 16.7 Supplier may assign the Agreement or sub-contract the whole or any part thereof. Buyer shall not attempt to assign, transfer, charge or otherwise deal with its rights or obligations under the Agreement without the prior written consent of Supplier.
- 16.8 The rights and remedies of Supplier under these Conditions shall be cumulative and no right or remedy of Supplier set out in these Conditions shall be deemed to be in lieu of any other right or remedy.
- 16.9 Any notice required or permitted to be given by either party to the other shall be in writing addressed to the other party at its registered office or principal place of business. Notice (save for commencement of proceedings) may also be sent by email, to an approved e-mail address recipient (as notified by the recipient party in writing), provided that no failed delivery or out of office message is received.
- 16.10 Nothing in the Agreement creates a partnership or joint venture or relationship of employer and employee or principal and agent between the parties and no employee of one party shall be deemed to be or become an employee of the other party.
- 16.11 The Agreement will not be enforceable by any person other than Buyer and Supplier.
- 16.12 The Agreement contains the whole agreement between the parties in respect of the applicable subject matter and shall supersede all prior written or oral agreements, arrangements and understandings between the parties relating to such subject matter.
- 16.13 If Buyer is a merchant, the sole place of jurisdiction for all disputes arising directly or indirectly out of or in connection with the Agreement shall be Darmstadt. However, Supplier is also entitled to take legal action at Buyer's place of business. The Agreement shall be governed by German law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the provisions of private international law.