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# Conditions of Purchase



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## **Conditions of Purchase Wernsing Feinkost GmbH**

### **1. Subject of contract / Area of application**

(1) The procurement terms and conditions apply to all contracts agreed by Wernsing Feinkost GmbH (hereafter referred to as "the purchaser") for the procurement of foodstuffs, raw materials and other goods with suppliers (hereafter referred to as "the supplier"), in so far as no other written agreement is in place. Contradictory or differing terms and conditions of the supplier are not recognised. Silence on the part of the purchaser regarding differing terms and conditions on the part of the supplier do not constitute acceptance. This is also the case where the purchaser makes reference to correspondence which contains or refers to terms and conditions of the principal or a third party.

### **2. Conclusion of contract**

(1) The offers from the supplier must conform to the specifications, tenders and any drawings from the purchaser in terms of quantities, properties and execution of the products. The supplier must inform the purchaser in writing of any planned or existing deviations. Deviations require the express written agreement of the purchaser.

(2) The validity of orders is not dependent on a particular format. They may be issued in writing or verbally. In the case of verbal orders, the supplier must state the name of the ordering individual on the delivery note and invoice.

(3) The delivery terms, delivery quantities and the delivery dates/times for the items which are to be delivered and/or produced by the supplier will be defined in individual purchase orders between the purchaser and the supplier.

(4) The supplier must accept or completely fulfil the purchase order within a period of two days. Objections must be communicated in writing.

(5) The purchase order number must be stated on all documents (in particular despatch advice messages, delivery notes and invoices).

### **3. Delivery**

(1) The contractually agreed delivery periods are binding. Any deviations must be notified immediately and punctually with a notice period of at least four weeks.

(2) The delivery dates or time slots contained in the purchase order are binding.

(3) The supplier must inform the purchaser immediately in writing if circumstances occur or come to his or her notice which mean that the agreed delivery time slot cannot be met.

(4) In the case of a delay in delivery, the purchaser shall be entitled to exercise all statutory rights. In particular, after the expiry of an appropriate period for performance or supplementary performance, the

purchaser is entitled to withdraw from the contract and to demand damages in lieu of performance. Notwithstanding any further contractual and legal claims, the supplier must pay the purchaser a delay compensation of 0.1% of the value of the contracted goods per day, limited to a maximum of 5% of the order value. The supplier is free to provide proof that no or significantly less damage was caused as a result of the delay.

(5) The supplier is not obliged to accept and pay for part-deliveries or pre-deliveries. These may be rejected or stored at the risk and expense of the supplier

(6) In so far as no other agreement has been reached, deliveries should conform to Incoterms 2010 DDP.

#### **4. Quality**

(1) The supplier guarantees that the delivered goods conform to the contractually agreed specifications, in particular regarding the quality and quantity criteria defined in the purchase orders and the purchaser's product specification.

(2) Any change in the quantities, composition or ingredients of the goods, as well as changes to packaging, must be notified in writing immediately with a notice period of at least six weeks before the planned execution and requires the express written agreement of the purchaser.

(3) The supplier guarantees the consistent and seamless traceability of the supplied goods according to the relevant legal requirements. The supplier guarantees the unrestricted marketability of the delivered goods.

(4) The purchaser is not obliged to check for mixed loads during the receiving of goods on pallets or in packaging units which are labelled as single-product. In this respect it is underlined that the supplier is responsible for the unmixed delivery of packaging units.

(5) The goods inwards inspection process does not include confirming the completeness and correctness of the packaging printing. This is the responsibility of the supplier.

#### **5. Logistics**

(1) The logistic guidelines of Wernsing Feinkost GmbH apply. Any deviations must be noted explicitly in the product specification or the supplier supplementary documentation.

(2) The agreed product properties also include the agreed properties of the packaging. The supplier is responsible for damage to goods as a result of inadequate packaging. The term "packaging" includes in this context the primary packaging (product/sales), the secondary packaging (single-use transport packaging or cartons) and the tertiary packaging (pallets, means of securing product for transport).

#### **6. Transfer of risk**

(1) Unless otherwise agreed in writing, the supplier must hand over the goods to the purchaser at the place of performance in compliance with the product-specific conditions. The risk of accidental loss and accidental deterioration of the goods passes to the purchaser at the point of transfer.

(2) The delivery vehicles used by the supplier or his subcontractors or agents must be in perfect technical and hygienic condition. The supplier must ensure that contamination of the goods with foreign substances is excluded.

(3) In the case of certified goods (e.g. "Bio"), the goods must be accompanied by the relevant documentation and product labelling in accordance with the version of the requirements of the respective certifying body which is valid at the time of delivery.

## **7. Payments**

(1) Supplier invoices must include the purchase order number of the purchaser. Any delay or expense resulting from non-conformance with this obligation is the responsibility of the supplier. The purchaser is entitled to return any incorrect invoices and to demand the issue of a correct invoice.

(2) Invoice receipt must be in paperless, electronic format. Only invoices which contain a single PDF document as an attachment to an unsigned email will be processed. All data which is relevant to the invoice (for example accounting-relevant details) must be included in a single PDF file together with the invoice.

(3) Unless otherwise agreed in writing, payment will be issued within 30 days of receipt of invoice subject to deduction of any agreed early payment discounts.

(4) The payment period will be determined by the day of receipt of the invoice or, in the case of pre-invoicing, by the date on which the goods are completely received by the purchaser.

(5) The purchaser is entitled to deduct the value of any financial claims existing against the supplier from any financial claims issued by the supplier against the purchaser.

## **8. Liability for defects**

(1) The purchaser is entitled to choose the type of supplementary performance. The supplier may only refuse the type of supplementary performance required by the purchaser if it is associated with disproportionate costs. The right to damage compensation, in particular the right to claim damages instead of performance, is expressly reserved. Should the supplier not begin to remedy the defect without delay on request of the purchaser, the purchaser is entitled to rectify the defect or to charge a third party with the rectification at the expense of the supplier in order to prevent major risk or avert major damage. If it is foreseeable that the supplier cannot or cannot completely remedy the defect before the end of the relevant delivery period for the goods, the aforementioned entitlements are available to the purchaser without prior request.

(2) In the case of defects of title, the supplier also releases the purchaser from any existing claims of third parties, unless the supplier is not responsible for the defect of title. Claims as a result of defects lapse after three years, except in the case of malicious intent. The period of limitation begins with the delivery of the goods at the place of performance.

(3) Should the purchaser incur costs as a result of the defective delivery of the contracted goods, in particular transport or road costs, labour, material or the costs of any inspection of incoming goods exceeding the normal scope, these costs are the responsibility of the supplier.

(4) The statutory provisions on material and legal defects apply to the contractual relationship, unless otherwise stipulated above.

(5) Obvious defects in fresh goods will be notified by the purchaser to the supplier immediately; in the case of all other products within 5 days from receipt of the complete delivery.

(6) For hidden defects, the period of notice is one week from discovery of the defect. Payments of invoices do not act as an acknowledgment of the freedom from defects of the delivered goods.

(7) Goods subject to complaint must be inspected immediately by the supplier and at his expense, in the case of products other than fresh products within five days, and in the case of an actual defect, transported away, at the expense of the supplier. If the goods are not collected within the agreed period, the purchaser is entitled to store the goods at the expense and risk of the supplier or, in the case of a risk of spoilage, to sell or destroy the goods.

(8) The purchaser is entitled to the statutory warranty claims in full.

(9) Complaints are to be responded to by the supplier within five working days, in so far as no other deadline is in place, and to be addressed with appropriate action.

## **9. Product liability / indemnity**

(1) The supplier is obliged to indemnify the purchaser from all claims asserted by third parties for personal injury (that is, damage due to death or injury to a person's body or health) or property damage, to the extent that they are based on a fault of the product supplied for which the supplier has responsibility.

(2) In the context of his liability for claims within the meaning of paragraph (1), the supplier is also obliged to reimburse any expenses pursuant to §§ 683, 670 BGB and §§ 830, 840, 426 BGB arising from or in connection with a recall action carried out by the purchaser. The purchaser will inform the supplier as far as is possible and reasonable about the content and extent of the recall measures to be carried out and give him the opportunity to comment. This does not affect other statutory claims.

(2) The supplier must maintain a suitable product liability insurance with an insured flat rate sum of at least € 5,000,000 per personal injury / property damage for the duration of the contractual relationship, in other words until the expiry of the warranty period.

(4) Further claims for damages by the purchaser remain unaffected.

## **10. Industrial property rights of third parties**

(1) The supplier warrants that no third-party property rights, for example regarding the goods, their packaging or marks as well as advertising claims made in connection with the goods will be infringed.

(2) If claims are made by a third party against the purchaser with respect to the aforementioned infringement of third party rights, the supplier is obliged to indemnify the purchaser from all such claims unless he can prove that he is not responsible for the infringement of industrial property rights. The indemnification also includes the costs and expenses of the defence of the purchaser against such claims by third parties.

(3) The supplier also undertakes to assist the purchaser in the defence against any such claim in accordance with paragraph (2) by providing all necessary information and documents. In this case, the purchaser will take the interests of the supplier into account as appropriate.

(4) The statute of limitations of the purchaser's exemption claim against the supplier is governed by the statutory provisions.

(5) The statutory rights and claims shall otherwise remain unaffected.

(6) Non-assignment clause: The assignment or pledging of claims of the supplier against the purchaser resulting from the business relationship between the parties to third parties is excluded, unless the purchaser has consented in advance to such a transfer or pledge in writing.

## **11. Confidentiality and amendments**

(1) Side agreements, changes, additions or limitations to these conditions and to the written content of the contract must be in writing. Verbal side agreements are invalid. This also applies to side agreements, changes, additions to or limitations of this stipulation requiring the written form.

(2) If provisions of these conditions or parts thereof are or become ineffective, the validity of the purchasing conditions and the rest of the contract shall not be affected. In place of the ineffective or unenforceable provision, an appropriate provision shall be agreed which, as far as is legally possible, comes closest to what the parties intended.

(3) The purchaser reserves ownership and copyrights to illustrations, drawings, recipes, calculations and other documents as well as tools which the purchaser provides to the supplier for the execution of orders; these may not be made available to third parties by the supplier without the express written consent of the purchaser. These are to be used exclusively for production relating to the purchase order and must be returned to the purchaser unasked on completion of the order. They are to be kept secret from third parties. This obligation to secrecy is also applicable after completion of the contract and expires only if and when the production knowledge contained in the supplier illustrations, drawings, recipes, calculations and other documentation has become public knowledge.

(4) Secrecy: The parties undertake to keep all business and trade secrets confidential. Furthermore, the supplier is obliged to make business and trade secrets which have come to his attention in the context of the performance of the contract available to third parties only to the extent that this is absolutely necessary for the fulfilment of the orders. The supplier will ensure that all data media – in whichever form – which contain business and trade secrets belonging to the purchaser will only be copied and reproduced in so far as this is essential for performance of the contract and that these will be returned immediately and completely to the purchaser on completion of the individual contract or on termination of the legal relationship between the parties, in so far as it is not required to retain these media for legal or taxation purposes.

(5) The supplier is liable to the purchaser for any damage caused as a result of the transfer of data media, for which he is responsible, to third parties. In this case he is liable for the actions of his employees as much as for his own actions. Employees include contract workers and any other persons who act on behalf of the supplier.

## **12. Cartel violations**

If the supplier has demonstrably been involved in a restriction of competition as prohibited by European or national law concerning the goods purchased from the purchaser, the purchaser is entitled to a flat-rate claim for damages for the period of proven participation. The flat-rate claim for damages in the case of proven fixing agreements regarding price or customers amounts to 5% of the turnover relating to the affected goods purchased by the purchaser during the relevant period. In the case of a proven participation in an inadmissible exchange of information affecting the direct customers of the supplier, the claim for damages amounts to €100,000.

### **13. Place of performance, court of jurisdiction and code of conduct**

(1) The supplier agrees to abide by the BSCI Code of Conduct. Social standards: The parties agree that minimum social standards must be observed when manufacturing the products sold by the purchaser. The purchaser's intention is to ensure that no products are sold that have been manufactured in violation of the fundamental social rights of employees. The supplier guarantees that the regulations of the national labour law are observed, taking into account international agreements, in particular the ILO. He is responsible for ensuring that the working conditions comply with the Code of Conduct of the purchaser, in particular that the products are not manufactured using child labour or forced labour; that the employees receive wages (which must be clearly defined and regularly paid) which comply with the applicable laws and/or the local manufacturing standards; that the maximum regular working time per week is not more than 48 hours and the number of overtime hours per week is not more than 12 hours (additional overtime is only allowed if it is due to short-term operational requirements and subject to collective bargaining agreements, and employee overtime hours must be paid separately or compensated by leisure time); that the employees are entitled to a day off after six working days; that there is no discrimination on grounds of the personality or personal convictions of the individual workers; and that workers are not limited in their right to organise, to join and to engage in collective bargaining. Furthermore, the supplier must ensure safe and healthy working conditions and comply with environmental and safety regulations. The supplier will also impose the above obligations on his business partners and monitor them on an ongoing basis.

(2) The language of this contract is German, in so far as the parties have not agreed otherwise. If multilingual versions are provided, the German language will be used in case of differences or difficulties in interpretation.

(3) The place of performance and place of jurisdiction is the registered office of the purchaser. The supplier is however also entitled to sue the purchaser at his registered office.

(4) German law applies; the validity of the UN sales law is excluded.

(5) In addition, the "General Terms and Conditions for Business" of Wernsing Feinkost GmbH apply. These can be downloaded under [www.wernsing.de](http://www.wernsing.de).

Additionally applicable documents

- **Logistics guidelines**
- **Purchasing and receiving guidelines for potato cultivation**