

**General Terms and Conditions of Business**

Valid as of March 1, 2013

**Article 1**

These General Terms and Conditions govern any and all deliveries, services and offers supplied and provided by our company. Should notice not have been taken thereof until our acknowledgement of order, said General Terms and Conditions shall constitute an integral part of the contract with respect to an enterprise becoming a party to this contract on unconditional acceptance of the respective goods. They also apply to any and all subsequent business relations even if not expressly agreed again. Any dissenting terms and conditions of our business partner or any other deviations herefrom shall only apply if we have confirmed the same in writing beforehand.

**Article 2**

Any and all offers and quotes we make shall be understood as exclusive of the respectively applicable statutory VAT and in all cases subject to change without notice unless otherwise specifically agreed in writing. Any and all declarations of intent made verbally or by telephone regarding the conclusion of a contract shall in all instances require our written or electronically transmitted confirmation in order to be legally valid. We shall accept no liability for aural misunderstandings that might occur during business dealings conducted with us by telephone.

**Article 3**

Agreed or affirmed delivery deadlines or periods shall not be deemed to be firm and binding unless specifically confirmed in writing. We shall only be deemed to be in default when we have also failed to meet an additional respite of at least five working days set by the Customer. In cases in which the delivery or performance is made significantly difficult or impossible for us, we shall be entitled to, as we see fit, either extend the delivery period or time of performance by the duration of the respective hindrance, plus a reasonable start-up time, or withdraw in part or in whole from the contract in terms of the part of the delivery or performance that has not yet been completed. This shall in particular apply in the case of hindrances in the obtainment of unprocessed goods, any form of stoppage, the destruction of unprocessed or finished goods by fire or as result of any other occurrence, difficulties in terms of water supply, abnormal increases in the prices of consumables and indirect materials, energy shortages, strikes, lockouts, disruption of traffic, official directives or decrees of any type or form, staff shortages, states of war or siege, riots, storms, ice drifts, complete or partial crop failure, abnormal drought or sustained rainfall, plant diseases, vermin plagues, restrictions on cultivation and similar circumstances and occurrences. Conclusion of contract shall take place with reservation as to correct and punctual delivery to us on the part of our own suppliers to the extent that we cannot be held responsible for our suppliers' default in such instance. The Customer shall be accordingly notified in the event of non-availability of the contractual delivery or service and the relevant consideration will be reimbursed without delay. Irrespective of the aforesaid conditions, we shall in all instances be entitled to partial performance of the contractual delivery or service.

All of our articles are manufactured in accordance with the respectively applicable laws and regulations on food processing, and this is correspondingly declared on the containers in which they are distributed and delivered. Having taken receipt of the contractual goods, the purchaser shall be responsible for the declaration, storage and condition of said goods. Any and all pallets and packaging are returnables and must either be exchanged or returned. We shall only take back pallets of the identical type, dimensions and quality as delivered, with the quality being assessed by us. To the extent that the pallets are not regularly exchanged and our Customer falls into default in such exchange we shall then be entitled to set a final deadline of 14 days; failure of the Customer to meet this final deadline shall entitle us to charge for the pallets that have not yet been returned at their price as new, irrespective of whether the pallets in question were new or already used.

**Article 4**

If the Customer is an enterprise, only the manufacturer's product description shall be deemed as agreed upon in respect of the quality of the goods. Public statements, claims or advertising on the part of the producer shall not constitute complementary contractual information on the quality of the goods. Upon receiving goods from us or our agent, the Customer shall immediately examine them in the presence of the driver to identify any faults or shortfalls, and any such faults or shortfalls as may be found shall be reported to us without delay giving a reasonable description by telephone, fax or e-mail. The Customer shall store the products alleged to exhibit faults at a suitable temperature. No complaints concerning obvious faults shall be accepted at a later date. Irrespective of the aforesaid condition, the Customer shall be obliged to inform the Seller if he becomes aware of any facts that limit or exclude the marketability of the goods due to food law requirements. This shall also apply if the goods delivered by us have already been put into circulation by the Customer. In the event of any complaint, we may have the goods in question examined by an expert.

Experts' fees arising in the event of justified complaint shall be borne by us and otherwise by the Customer. In the former instance, the Customer, if an enterprise, shall be entitled to replacement delivery or a reduction of the purchase price as we see fit. Any and all further claims, including any form of claim for damages, in other words such claims which are asserted not only on grounds of defects, reduced output or defective performance, shall be excluded. This shall not apply if at least gross negligence can be held against us or in the event of physical injury or damage to health or the death of the Customer for which we can be held liable. The aforementioned exclusion of liability shall also not apply in the case of our negligent infringement of essential contractual obligations. In such case the liability shall be restricted to typical and foreseeable damage to a maximum amount of €1 million. Damage claims on the part of the Customer on grounds of a defect shall become statute-barred one year after the goods in question have been delivered unless our liability is based on intentional misconduct.

**Article 5**

If the Customer is contractually obligated to purchase our goods in the form of weekly or monthly partial consignments but is late in doing so, even if this concerns just one partial consignment, he shall be obliged to pay for each week of delay a contractual penalty of 2.5% of the purchase price of the delivery quantity in arrears, however, not more than 20% of the purchase price of the undelivered quantity. Additionally, if the Customer fails to fulfil or is late in fulfilling his contractual purchase obligations, we shall then immediately be entitled to sell the partial consignment in question elsewhere or take the goods out of the warehouse and charge the Customer for additional costs arising from said late purchase and set the Customer a final deadline in writing of two weeks in which to meet said obligation.

The Customer's failure to meet this final deadline shall entitle us to withdraw from the contract via written notification and demand damages in lieu of performance. We shall not be required to set a further deadline if the Customer earnestly or definitively refuses to take delivery of the goods. Any claim for damages in lieu of performance shall amount to 20% of the total purchase price, with said total purchasing price comprising the purchase prices of the quantity not delivered by the time the deadline expires or of the residual quantity as at the termination of the contract. Damages shall be set correspondingly higher or lower if we can prove that we have sustained a higher loss or the Customer can prove that we have sustained a lower loss.

**Article 6**

Failing written confirmation to the contrary, our invoices shall fall due for payment without any form of discount within ten days as from the date of their issue. Payments made beyond said deadline shall be subject to interest at the rates as per Article 288 BGB (German Civil Code).

Due payments shall only then be deemed to have been made in full and as agreed when they have been booked to our account. The time at which due payments are booked to our account shall also be decisive where payment by cheque is concerned, subject to immediate cheque presentation.

In the event that during the term of the concluded supply agreements the Customer's settlement of accounts takes place via a settlement company or if a company assumes the credit risk in relation to such payment, this shall entitle us to raise the contractual price by the percentage thereof that we then have to pay to such settlement company.

On becoming aware of the fact that our Customer's financial situation has significantly deteriorated (e.g. dishonouring of a cheque or bill of exchange or the like) we shall then immediately become entitled – without any need for a further reminder – to call due all outstanding invoices and demand the payment thereof in cash.

Furthermore, we shall in such case also be entitled to terminate other current contracts and demand compensation. The Customer shall only have a right of set-off if his/its counterclaims have been unappealably established by a court of law or acknowledged by us. The Customer may not exercise any right of retention unless his/its counterclaim is based on the same contractual relationship.

**Article 7**

If our Customer, who purchases goods from us under its trademark, does not take further delivery of such goods for any reason whatsoever, it shall in all such cases be obligated to take delivery at its

expense of the packaging stored or already ordered by us for the Customer. This shall also apply if we refuse to supply the Customer further for justified reasons.

**Article 8**

In the event that the import or export duties or other levies, taxes, etc. on the raw materials for our products or on our products themselves should increase after conclusion of contract, the prices of our products may be raised by way of direct passing on of the respective increase. Should the potato price quotation (processing potatoes for French fries) on the EUREX Frankfurt potato futures market (closing quotation of the FUTURE INDEX FEPP [European Processing Potato Futures / Product-ISIN DE000A0Z3068] on the EUREX potato futures market / Frankfurt am Main [exchange: XFRA] – available under [http://www.eurexchange.com/market/statistics/market\\_statistics/online.html](http://www.eurexchange.com/market/statistics/market_statistics/online.html)) for April of the year following that of the contract's conclusion have risen at the time of delivery by more than 50 percent over the corresponding quotation at the time of the contract's conclusion (materiality limit), the Seller shall then be entitled/obliged to withdraw from the contract on expiry of a period of four months as from conclusion of the contract in question or in case of long-term contracts (contracts for the performance of a continuing obligation, successive delivery contracts), or, alternatively, raise the contractual price for finished products processed on the basis of potatoes by the amount that corresponds to the rise or fall in price of the processing potatoes in our product after deduction of the materiality limit. (Example: A yield of 50% is presumed in terms of our "Pommes frites/French fries" product. In the event that the relevant quotation rises from € 10 per quintal at the time of the contract's conclusion to € 24 per quintal at the time of delivery, this means that the Seller may demand that the contractual price of the product be accordingly adjusted [change in costs = € 14 per quintal – materiality limit = 50 percent of € 10 per quintal – yield = 100%/50%] to € 18 per quintal). If, due to lapse of time, there is no corresponding April quotation at the time of delivery, the subsequent June quotation shall be taken as basis, with the last June quotation also forming the basis for the adjustment of the contractual deliveries up to and including August of the year following that of the contract's conclusion. If the duration of the contract exceeds the 31<sup>st</sup> of August of the following year the quotation at the time of the contract's conclusion shall form the basis for the remaining contract duration. In order to allow for billing at the time of delivery, the adjustment of prices as described above is established on the basis of the quotation from the week before delivery (in case of exchange quotations: the quotation of the first trading day of the previous week). If, with reservation as to the above contractual arrangements, the general costs of manufacture and distribution (in particular energy, fuel, other raw materials, etc.) should rise abnormally due to any reason whatsoever for which we cannot be held responsible, we shall then be entitled to pass on such increase to the Customer to a reasonable extent in the case of long-term contracts as described above. The Seller shall announce its assertion of this right at least 2 weeks beforehand. Price adjustments on the basis of continually changing quotations regarding consignments delivered thereafter do not have to be announced.

**Article 9**

We shall retain full title of the goods that have been delivered until our Customer has settled any and all outstanding invoices and claims, including those arising from previous or subsequent deliveries. The provisions of Article 6 shall apply. The Customer's infringement of the contractual provisions, in particular default on payment, shall entitle us to withdraw from the contract and demand the return of the reserved goods. The Customer shall have the right to resell, process, mix or utilize said goods within the ordinary course of business, however subject to the proviso that he/it is not in arrears in terms of payments that are owed to us. Any processing or mixing of the goods shall take place exclusively by our order but for the account of our Customer. The parties here and now in particular agree that, in the case of the goods having been mixed or processed, co-ownership of the new or mixed goods shall pass to us or we shall be entitled thereto in a proportion that corresponds to the value of the goods supplied by us, including the processing and mixing costs. The parties simultaneously agree that our Customer shall keep such new product or mixed goods in safekeeping on our behalf. The Customer here and now assigns to us any and all claims arising from the resale of the reserved goods – even after processing or mixing – to the extent covered by our reservation of title. We herewith accept such assignment. In this respect our Customer shall on demand at any time make known to us the names and addresses of its/his customers as well as the amount of the claim in each case and notify third party debtors of the aforementioned assignment of claims to us. We shall also be at any time entitled to disclose said assignment. Our Customer shall be only be authorized to collect the receivables assigned to us as defined above to the extent that it/he is not in default or arrears in terms of his obligations to us. The Customer undertakes to hold such receivables in safekeeping exclusively for us, insofar as they are due, and pay them over to us without delay. We reserve the right to collect such receivables ourselves in the event that the Customer, if an enterprise, fails to duly meet his payment obligations and falls into arrears. Our Customer shall on no account be entitled to hypothecate our reserved goods – even in the case of processing or mixing – or to pledge them as security or make them subject to similar encumbrances. In the event that our reserved goods – even in processed or mixed state – are impounded, seized or taken similar action against by third parties, the Customer shall without delay emphatically assert our rights vis-à-vis such party, take the necessary legal measures and inform us immediately, sending and disclosing to us all relevant correspondence and documents and furnishing us with all facts that we might require towards asserting our rights. We undertake to release the securities to which we are entitled to the amount by which they exceed the value of the secured receivables, to the extent that these have not yet been settled, if said securities exceed this value by more than 20 percent.

**Article 10**

The Customer herewith acknowledges and accepts that relevant data made available to us by the Customer or by third parties within the framework of the business relationship are stored and processed in our computer system subject to the provisions of the German Data Protection Act.

**Article 11**

The place of fulfilment shall in all cases be D-49632 Essen/Germany. The agreed place of jurisdiction within the meaning of Article 38 Paragraph 1 of the German Code of Civil Procedure shall depend on our company's principal place of business. However, we shall nevertheless have the right to institute legal proceedings at the Customer's principal place of business. In addition to our General Terms and Conditions, the contractual relationship shall be governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

**Article 12**

Should any part of this Agreement be or become invalid or unenforceable, the validity of the remaining provisions hereof shall in no way be affected. In such case the parties shall replace the invalid or unenforceable provisions with other provisions that come as close as possible to the parties' commercial intention.