Terms of Sale and Delivery

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For supplies of goods and, additionally, for contract blending, filling and development services in business transactions with business customers.

1 Scope and priority of agreements

1.1 Where validly incorporated into the contract, these terms apply to our supplies and services to entrepreneurs within the meaning of section 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law. We do not enter into contracts with consumers.

1.2 Individual agreements, particularly concerning specifications, prices, delivery terms and quality assurance, take priority, regardless of their form. For documentation purposes, agreements should be recorded in text form, for example by email; statutory form requirements remain unaffected.

1.3 Conflicting or supplementary terms and conditions of the customer are not accepted merely because we do not object to them or deliver without reservation. Their incorporation is governed by the parties' agreement and the statutory rules. These terms apply to subsequent transactions to the extent that their application to such transactions has been agreed.

2 Offers and formation of the contract

2.1 Our offers are non-binding unless expressly designated as binding or containing a binding acceptance period.

2.2 A contract is formed when we accept the order in text form, make delivery as agreed or begin the service ordered. An acceptance that differs in substance generally constitutes a new offer requiring the customer's acceptance. The legal principles governing commercial letters of confirmation remain unaffected.

2.3 The nature and scope of performance are determined by the contract, including agreed specifications and other documents expressly incorporated into it. Silence in response to subsequent changes does not, in itself, constitute consent.

3 Product quality and use

3.1 We supply products of the agreed quality and in compliance with the statutory requirements applicable to our activities. The agreed product specification, expressly agreed uses and samples incorporated on a binding basis are particularly relevant. Statutory requirements concerning freedom from defects remain unaffected.

3.2 We assume a guarantee only where we expressly declare one. This provision does not restrict any agreed quality or statutory rights in respect of defects.

3.3 The customer must inform us in good time of any special requirements, the intended use and, where applicable, target markets other than Germany. We owe particular suitability for a manufacturing process or target market not disclosed to us only to the extent required by the contract or by law.

3.4 Application guidance and dosage recommendations must be assessed in the context of the specific formulation, processing and labelling. The customer carries out the suitability and production tests required within its sphere of responsibility. Our responsibility for accurate advice owed under the contract, promised characteristics and our own statutory obligations remains unaffected.

3.5 Statements such as vegan, allergen-free, organic, kosher or halal, and particular requirements concerning origin or purity, are owed as contractual requirements only where agreed for the product concerned. Mandatory information and labelling requirements remain unaffected.

4 Prices and payment

4.1 The agreed prices apply, plus statutory VAT. Unless otherwise agreed, our usual standard packaging is included; any additional shipping costs are agreed before the contract is concluded. Price changes for contracts already concluded require a separate agreement.

4.2 Payment periods and cash discounts are determined by the individual contract. Unless otherwise agreed, invoices for goods must be paid without deduction within 14 calendar days after receipt of a proper invoice, but not before delivery. Clause 13.6 applies to services and work performed under contracts for work.

4.3 Invoices are issued and transmitted in accordance with the applicable statutory requirements. To the extent legally permissible, the customer also consents to the transmission of other electronic invoices to the email address designated for that purpose. Statutory requirements for structured electronic invoices remain unaffected.

4.4 In all other respects, due dates, default and the consequences of default are governed by law. For payment claims in transactions without consumer involvement, statutory default interest and, where applicable, the statutory fixed compensation for default apply in particular. Withdrawal from the contract or damages in lieu of performance are subject to the statutory requirements.

4.5 The customer may set off claims that are undisputed or have been established by a final judgment. This also applies to counterclaims arising from the same contractual relationship that are reciprocal to the performance owed. Rights of retention and rights to withhold performance arising from the same contractual relationship remain unaffected.

4.6 If, after the contract is concluded, it becomes apparent that our payment claim is jeopardised by the customer's inability to perform, we may withhold performance and demand security or counter-performance in accordance with section 321 BGB. Further rights exist only where the statutory requirements are met.

5 Delivery and transfer of risk

5.1 Delivery dates, delivery periods, the place of delivery and, where applicable, a specific Incoterms clause are agreed in the contract. Incoterms apply only where expressly incorporated with the named place and edition.

5.2 Any required cooperation by the customer is specified in the order. Delays in such cooperation result in a reasonable adjustment of dates only to the extent that they actually delay performance. We inform the customer of foreseeable effects.

5.3 Unless otherwise agreed, goods are made available for collection at our premises in Hamburg. On collection, risk passes upon handover. If, at the customer's request, we dispatch goods to another location, the transfer of risk is governed by section 447 BGB. Different delivery terms agreed by the parties take priority. Default in acceptance is governed by law.

5.4 Partial deliveries are permitted if they are usable and reasonable for the customer and do not cause additional costs that have not been agreed. Agreed deliveries as a whole or on a fixed date remain unaffected.

5.5 Quantity deviations are permitted only where a tolerance has been agreed in the order or product specification. Invoicing is based on the quantity actually delivered in accordance with the contract.

6 Impediments to performance and call-off orders

6.1 An event for which neither party is responsible, which was unforeseeable when the contract was concluded and could not be avoided by reasonable measures, may prevent the affected performance for the duration of its effects. The affected party must inform the other without undue delay of the cause, extent and expected duration and endeavour to mitigate loss. Not every operational disruption, price increase or failure of an upstream supplier to deliver constitutes such an event.

6.2 To the extent that such an event prevents performance, affected periods are extended by the actual period of disruption and a reasonable restart period. Mandatory statutory rights, particularly in cases of impossibility or unreasonable hardship, remain unaffected. If the disruption lasts more than eight weeks, either party may withdraw from the affected part of the contract that has not yet been performed; further statutory rights of withdrawal remain unaffected. Performance no longer to be provided is not charged, and corresponding advance payments are refunded without undue delay.

6.3 For call-off orders, the total quantity, call-off period, partial quantities and lead times are specified in the order. Binding minimum purchase obligations exist only to the extent agreed. A non-binding forecast alone does not create a purchase obligation.

6.4 If a call-off is not made or the customer is in default of acceptance, statutory rights apply. Necessary and reasonable storage or other additional costs may be claimed where the statutory requirements are met. These terms do not establish any flat-rate contractual penalty or liquidated damages.

7 Packaging and storage

7.1 Packaging type, pack sizes and labelling are determined by the order. The customer must observe the communicated storage and transport conditions and protect opened containers against moisture, contamination and impermissible temperatures.

7.2 The exchange, return and charging of pallets, H1 pallets, reusable containers, drums or big bags require a separate agreement. Statutory take-back and packaging obligations remain unaffected.

7.3 Any minimum remaining shelf life on delivery is agreed for the specific product. A best-before date replaces neither the assessment of a defect existing when risk passes nor the statutory limitation rules.

8 Retention of title

8.1 Goods sold by us remain our property until all claims arising from the ongoing business relationship have been paid in full. This does not include items already owned by the customer and provided to us solely for processing or safekeeping.

8.2 The customer may process and resell goods subject to retention of title in the ordinary course of business. Pledging them or transferring title by way of security is not permitted. The customer must inform us without undue delay of any third-party enforcement against the goods and treat the goods with care.

8.3 Any processing of goods subject to retention of title is carried out for us as manufacturer without imposing obligations on us. Where they are processed with goods belonging to others, we acquire co-ownership in the ratio of the invoice value of our goods to the value of the other goods used at the time of processing. Combining or mixing is governed by the statutory rules; to the extent that the customer acquires sole ownership, it hereby transfers a corresponding co-ownership share to us. We accept that transfer. The customer holds our property in safekeeping free of charge.

8.4 The customer hereby assigns to us, by way of security, its claims arising from the resale of goods subject to retention of title; we accept the assignment. In cases of co-ownership or sale together with other goods, the assignment is limited to the portion of the claim corresponding to our share or to the invoice value of the goods subject to retention of title.

8.5 The customer remains entitled to collect the claims as long as it meets its payment obligations and no specific circumstances jeopardise payment of our secured claims. The collection authorisation is revoked only if such a security enforcement event occurs. Upon a justified request, the customer must provide the information necessary to enforce the assigned claims.

8.6 If the realisable value of the security exceeds the secured claims by more than 10%, we will, upon request, release security of our choice to the corresponding extent. The customer's legitimate interests will be taken into account.

8.7 We demand the return of goods subject to retention of title due to payment default only after effective withdrawal from the contract and where the statutory requirements are met. This does not establish a right of entry or self-help. Mandatory insolvency law remains unaffected.

9 Inspection and rights in respect of defects in goods

9.1 Where the contract is a commercial transaction for both parties, the inspection and notification requirements under section 377 of the German Commercial Code (HGB) apply. The customer must inspect the goods without undue delay after delivery to the extent practicable in the ordinary course of business and notify apparent defects without undue delay. Hidden defects must be notified without undue delay after discovery. Timely dispatch of the notice is sufficient to meet the deadline. The statutory exceptions apply to fraudulently concealed defects.

9.2 To facilitate prompt handling, a defect notice should be provided in text form with product, batch and delivery details and a description. Where reasonable and legally permissible, the disputed goods and informative samples must be preserved for examination. Necessary safety measures must not be delayed as a result.

9.3 Statutory rights apply in the event of defects. We must be given the opportunity to provide subsequent performance to the extent prescribed by law. We bear the necessary costs of subsequent performance in accordance with the law. Statutory rights of recourse in the supply chain remain unaffected.

9.4 Statutory limitation periods apply to claims in respect of defects. Clause 10 additionally applies to damages. Processing or mixing the goods does not, in itself, result in the loss of rights in respect of defects. Rights are lost only to the extent that the statutory requirements for such loss are met.

10 Liability

10.1 We have unlimited liability for intent and gross negligence and for culpable injury to life, body or health. Liability under the German Product Liability Act, for fraudulent concealment of a defect, and under expressly assumed guarantees or an assumed procurement risk remains unaffected to the respective extent.

10.2 In other cases of ordinary negligence, we are liable only for breach of an essential contractual obligation. This means an obligation whose fulfilment is necessary for proper performance of the contract and on whose observance the customer may ordinarily rely. In that case, liability is limited to loss typical of the contract and foreseeable when the contract was concluded.

10.3 In all other respects, liability for loss caused by ordinary negligence is excluded. This clause also applies for the benefit of our legal representatives, employees and persons engaged to perform our obligations. Mandatory statutory liability remains unaffected in all cases; no alteration of the statutory burden of proof is intended.

11 Food safety and cooperation

11.1 Each party fulfils the food law obligations applicable within its sphere of responsibility. We provide the product and batch information legally required for our supplies. The customer ensures traceability within its subsequent sphere of responsibility.

11.2 If there are reasonable grounds to suspect a safety risk, an objection by an authority or a possible need for withdrawal or recall, the parties must inform each other without undue delay and exchange the information necessary to assess and identify affected batches.

11.3 Measures are coordinated to the extent permitted by the urgency of the matter. Statutory notification, withdrawal and recall obligations remain fully applicable. The allocation of necessary costs and loss is governed by the statutory rules and clause 10; no flat-rate assumption of costs irrespective of cause or responsibility is agreed.

12 Additional provisions for contract blending and filling

12.1 For contract blending and filling, the formulation version, responsibility for raw materials, target quantity, permitted tolerances, tests, containers, labelling and release procedure are specified in the order or a quality assurance agreement. Without an agreed tolerance, there is no general right to over-deliver or under-deliver.

12.2 Customer-supplied raw materials and packaging must be delivered in good time, be suitable and be clearly identified, together with the necessary specifications, batch and safety information. The customer must provide information about allergens, particular processing risks and legal restrictions on use to the extent that these fall within its sphere of responsibility.

12.3 We carry out the agreed and legally required incoming goods and process checks. Unless specifically agreed, we do not owe a full chemical or microbiological analysis of each customer-supplied item beyond those checks. We must communicate recognisable concerns about the suitability of materials or instructions without undue delay and clarify how to proceed. Our own inspection, warning and safety obligations remain unaffected.

12.4 Customer-supplied items remain the customer's property and are appropriately identified, separately allocated and protected against avoidable impairment. Ownership of resulting blends and products is specified in the order before production begins. Clause 8 does not apply to customer property.

12.5 The scope and remuneration of additional services, such as special analyses, special cleaning, repackaging, reworking or additional storage, are agreed before they are performed. Statutory claims for additional costs for which the customer is responsible remain unaffected. A documented agreement is made on remaining quantities, remaining packaging and disposal.

12.6 A customer release confirms the agreed customer specifications but does not release us from manufacturing in accordance with the contract or from our own statutory obligations. Goods that are disputed or potentially unsafe must not be dispatched solely on the basis of such a release.

13 Additional provisions for development and consulting

13.1 A development order specifies the objective, scope of services, milestones, remuneration, scope of testing and any results owed. A particular development outcome, regulatory approval, intellectual property right or commercial success is owed only to the extent agreed or required by the legal classification of the contract.

13.2 The legal classification is determined by the actual content of performance. Section 650 BGB applies where appropriate to the supply of movable items to be manufactured. Where a development or processing result is owed, the relevant rules governing contracts for work apply; pure consulting without an obligation to achieve a result is governed by the rules for service contracts. These terms do not alter the statutory classification.

13.3 Statutory acceptance and defect rules apply to work performed under contracts for work. Mere receipt of samples, a trial run or silence does not, in itself, constitute acceptance. Statutory effects of acceptance remain unaffected.

13.4 Pre-existing formulations, methods, documents and other know-how remain with the respective entitled party. A development order does not automatically entail exclusive use or the full transfer of all development rights. Where we create a protected result for an order, after full payment the customer receives at least the rights of use necessary for the discernibly agreed contractual purpose. Further or exclusive rights, disclosure of complete formulations and unrestricted manufacture by third parties require express agreement. Customer formulations are not used for other customers' orders.

13.5 Product trials under laboratory conditions do not automatically replace agreed industrial trials. Responsibilities for scale-up, process validation and release are specified in the order; our liability for our own breaches of duty is governed by clause 10.

13.6 Remuneration and the payment schedule are agreed in the development or consulting order. Unless specifically agreed, payment falls due under section 641 BGB for contracts for work and under section 614 BGB for service contracts. Even if commercial success is not achieved, contractual remuneration is payable only to the extent owed by law or under the contract. Statutory termination rights remain unaffected.

14 Confidentiality

14.1 Both parties must keep confidential the other party's non-public formulations, technical documents, samples, prices and other recognisably confidential business and operational information and use it only to perform the contract. Access is restricted to persons who require it for that purpose and are subject to corresponding obligations.

14.2 Exceptions apply to information demonstrably already lawfully known, independently developed, lawfully received from authorised third parties or made public without a breach of duty. Disclosures required by law remain permissible; where permitted and reasonable, the other party is informed in advance.

14.3 The obligation continues after the contract ends for as long as there is a legitimate interest in confidentiality. Statutory retention obligations and necessary preservation of evidence remain unaffected. A more extensive confidentiality agreement may be concluded separately.

15 Governing law and jurisdiction

15.1 German law applies, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). Mandatory applicable statutory provisions remain unaffected.

15.2 If the customer is a merchant within the meaning of German commercial law, a legal entity under public law or a special fund under public law, Hamburg is the place of jurisdiction for disputes arising from the contractual relationship. We may also sue the customer at its general place of jurisdiction. Mandatory exclusive jurisdiction and overriding international jurisdiction rules remain unaffected. Statutory jurisdiction applies to other customers.

15.3 If individual provisions are invalid or are not incorporated, the statutory legal consequences apply, particularly section 306 BGB. No automatic replacement by a clause with the closest possible economic effect is agreed.