

## **General Terms of Purchase, Procurement of Services and Production & Delivery of Foods of Biovegan GmbH**

Date of issue: 20 November 2019

### **I. Applicability**

(1) These terms and conditions only apply for companies and corporate bodies under public law.

(2) These terms and conditions apply, if we

- Purchase foods, raw material, other goods (hereinafter collectively called “goods”)
- Instruct a company to provide certain services (e.g. processing raw material) and/or
- Instruct a company to produce and deliver foods

These terms and conditions are exclusively valid. Terms and conditions of our business partners shall not apply, if they have not expressly been approved by us. They are also not binding if we accept deliveries/services of our business partner without reservation despite knowledge about the existing terms and conditions of the business partner or if we do not object to their validity on a case-by-case basis. Even if we refer to a letter that includes terms and conditions of the supplier or a third party or references to such terms and conditions, this shall not constitute any consent to the applicability of such terms and conditions.

### **II. Purchase orders and Interdiction to modify**

We shall be bound to our orders for one week. Our business partner's offer shall also be binding for one week. This one-week period starts from the working day of receipt of the offer by the other party.

(1) For the purchase of goods or the instruction of a company to produce and deliver foods, the Incoterms 2010: DDP Bonefeld applies.

(2) Our business partner shall not modify the goods/services without our approval. All subsequent alterations of the contract or the service owed require our consent.

### **III. Purchase of goods/Delivery of Foods to be produced**

#### **1. Request for change**

(1) We shall be entitled to change time and place of delivery as well as the type of packaging at any time by written notification with a notice period of at least 21 calendar days prior to the agreed delivery date.

(2) The same shall apply to changes to the product specifications, as far as they can be implemented within the framework of the supplier's normal production process without substantial additional expense and are notified by us in written form within a reasonable period of minimum 21 days in advance. The same applies for the delivery of raw material, if they can be obtained within the usual business activities of the business partner.

(3) We shall reimburse the suppliers for the proven and reasonable extra costs incurred due to the change, e.g. increased purchase costs, additional internal expenses. If such changes lead to delays in deliveries, the supplier shall inform us in written form after examination of our amendment request. In this case, the originally agreed delivery date shall be postponed accordingly. Our business partner shall inform us about the extra costs carefully assessed in due time after receipt of our amendment request, usually within three working days, in writing.

#### **2. Prices**

(1) The price shall include delivery and transport to the shipping address stated in the contract including packaging.

(2) As far as the price does not include the packaging according to the agreement made, and the remuneration for the packaging, which is not only provided on loan, is not expressly fixed,

this remuneration shall be charged at the demonstrable cost price. The supplier shall take the packaging back at its cost on our demand.

(3) Our order number, the article number, the delivery quantity and the delivery address shall be stated in all confirmations of order, shipping documents and invoices. Should one or several of these details be missing and should our processing within the framework of our normal business thus be delayed, the payment periods stated in V 2 shall be postponed by the period of delay.

(4) Subsequent price increases made by our business partner are not permissible.

### **3. Delivery time, delivery, transfer of risk**

(1) The delivery time (delivery date or period) stated in the purchase order shall be binding. Early deliveries shall not be permitted.

(2) The supplier shall be obliged to inform us immediately via phone and in writing if circumstances occur or become apparent due to which the delivery time cannot be complied with.

(3) In case of delay in delivery, we shall be entitled to the statutory claims without limitation, including the right of rescission and the claim for damages instead of performance after a reasonable grace period has expired without results. Temporary disturbances concerning self-delivery shall not release the business partner from his obligations.

(4) If deliveries are delayed, we shall be entitled after prior written warning to the supplier to demand contractual penalty in the amount of 0.5% and/or a maximum of 5% of the respective order value for each commenced week of delay. The contractual penalty shall be credited against the damage caused by delay to be compensated by the supplier.

(5) The supplier shall not be entitled to perform partial deliveries without our prior written consent.

(6) Even if dispatch has been agreed, the risk shall only be transferred to us when the goods are handed over to us at the agreed destination.

### **4. Samples, Excess/Shortage Quantities, Quality of Raw Material and Food Packaging, Product Specifications, Organic Certificate**

(1) In case of samples from the business partner and if we purchase goods in the future based on this sample, the goods delivered shall comply with these samples. If the business partner indicated a certain product specification during the negotiations or confirms the product specification required by us, goods shall be delivered correspondingly.

(2) Excess or shortage quantities shall not constitute an indication of contractually agreed performance.

(3) All raw goods delivered to us shall comply with the current European law provisions. Additionally, organic products must comply with the current legal requirements for organic products of the European Union and the guide values of the Bund Naturkost Naturwaren (Association of Organic Processors, Wholesalers and Retailers, BNN).

(4) For all raw goods delivered to us, a certificate must be provided stating that they do not consist of genetically modified organisms and are not produced from or by such organisms, and that any potential contamination with genetically modified organisms is below 0.1%.

(5) The provision of the following further documents shall be a mandatory requirement for raw goods: indication of the number of the organic certification body, information of the batch number and the minimum shelf life date. The organic certificate provided by the business partner prior to delivery shall still be valid upon delivery date. All raw material packages delivered shall indicate at least their sales description, batch number and minimum shelf life date. Organic goods must be labelled as such.

(6) All food packaging delivered to us must comply with the current legal provisions for materials and items intended to come into contact with food. This shall include current statutory provisions applicable to the migration of benzophenone and other low-molecular photo initiators from printing inks as well as for mineral oil transitions from recycling cartons.

(7) A food safety certificate must be submitted for all food packaging delivered to us.

(i) Furthermore, a declaration on whether UV printing inks have been used must be submitted for all food packaging delivered to us. If UV printing inks have been used, an additional declaration on whether low-molecular photo initiators are used in the UV printing ink and whether they include benzophenone must be submitted.

(8) Should the supplier fail to meet any of the above obligations, we may refuse acceptance and return the goods at the supplier's cost. Should we find out about the non-compliance with the before mentioned obligations after delivery, we are entitled to claim subsequent fulfilment or send the goods back.

(9) None of the goods delivered to us may be grown and/or crossbred according to the CMS procedure.

### **5. Shelf life of the goods, suspected defect, food safety hazard**

(1) For products requiring shelf-life related data (p.e. expiry date, shelf life), the remaining shelf life on delivery shall be minimum twelve months until expiry date.

(2) In case our business partner learns that goods, which have already been delivered to us, might be defective, the business partner is obliged to inform us immediately by phone and subsequently also in writing. This particularly applies in case of a suspicion of the goods posing a risk for the safety or health of persons or if the goods do potentially not fulfil the necessary conditions for duly placing the product on the market. The business partner shall subsequently and immediately share new information with us. If responsible authorities comment on the suspected defect, our business partner shall inform us immediately and transfer copies to us, if comments are in written form.

(3) In case our business partner is obliged to execute delivery, the business partner assures that these deliveries are not affected by the batches being suspect to defect. Our business partner will confirm this to us in writing to enable us to transfer this confirmation to our customers.

(4) In case our customer, for whom the suspected goods are intended, should refuse delivery or ask us to take back the affected goods, which have already been delivered and supply goods without any suspected defect, our business partner is obliged to supply replacement. In case of suspected defect, our business partner is also obliged to take back the affected goods and bear the expenses incurred by the recall. This also applies for possible costs arising from recalling the goods from our customer as well as from verifying our existing reference samples and stock of the delivery concerned. If the business partner is not able to deliver replacement in short term, and if the business partner is responsible for supplying suspected goods, we are entitled to claim for damages.

(5) The business partner shall share further documents and information with us regarding possible defects or suspected defects concerning our contracts upon request, if we can prove to have legitimate interest.

### **6. Traceability, quality assurance system, cooperation in governmental requests**

(1) Regarding products, the business partner ensures full traceability according to applicable legal EU regulations. This also applies for substances (ingredients, raw material, other additives), the date of production/processing of the goods, possibly affected packaging material as well as the manufacturing process.

(2) The business partner undertakes to implement and apply a comprehensive and up-to-date quality assurance concept to ensure compliance with the product specification. This particularly includes constant measures for quality control, particularly continuous analyses, inspection of incoming goods of the business partner, corresponding reference samples and examination prior to delivery to us.

(3) Shall we be requested to share evidence/information regarding defective goods with the authorities, the business partner undertakes to immediately cooperate accordingly, in case the governmental request relates to goods delivered or processed by the business partner, or if

the business partner provided one of the substances needed for the production of the concerned item.

## **7. Defects**

(1) We shall be entitled to the statutory claims without limitation.

This particularly applies for the limitation period for claims and the buyer's right of choice regarding the type of subsequent performance.

(2) We shall immediately check after receipt of the goods whether they correspond to the ordered quantity and the ordered type and whether there are externally visible transport damage or externally visible defects. Furthermore, we randomly test the goods.

(3) Quality and quantity deviations are notified in due time if we notify them to the supplier within five working days after our receipt of the goods. Hidden material defects are notified in due time if the notification is made to the supplier within five working days after their identification.

(4) We shall not waive any warranty claims by acceptance or approval of presented samples.

(5) Section III 5b)-e) correspondingly applies in case of a defect.

(6) The business partner ensures that no property rights of third parties are being violated in connection with the performance of the contract. The business partner is obliged to exempt us from all claims raised by third parties due to the violation of industrial property rights, and to reimburse all necessary expenses related to this claim, in case the business partner is responsible for it.

## **8. Product liability**

(1) The supplier shall be responsible for all claims asserted by third parties due to personal injury or material damage that are to be attributed to a faulty product delivered by it, and shall be obliged to indemnify us from and against any resulting liability. If we are obliged to carry out a recall affecting third parties due to defects of a product delivered by the supplier, the supplier shall bear any costs related to the recall.

(2) The supplier shall be obliged to maintain product liability insurance at its own cost, which, unless otherwise agreed in individual cases, does not have to cover the recall risk or punitive damages or other damage. The supplier shall send us a copy of the liability insurance policy at any time on demand.

## **9. Transfer of ownership**

The business partner has the right to deliver the agreed goods with extended reservation of ownership. We are free to process and sell the goods in the course of proper business operation. In case we don't comply with our payment obligations, we are not obliged to communicate data to enforce claims of extended reservation of ownership to the business partner.

## **IV. Procurement of services**

(1) Our order number, the type of service and the service provided (name of the employee of the business partner) shall be stated in all confirmations of order, proof of performance (e.g. time sheets) and invoices. Should one or several of these details be missing and should our processing within the framework of our normal business thus be delayed, the payment periods stated in V 2 shall be postponed by the period of delay.

(2) Subsequent price increases made by our business partner are only permitted after agreement.

(3) The performance period (performance date or deadline) stated in the purchase order shall be binding. Early or partial performances shall not be permitted.

(4) III 2 applies correspondingly, if our business partner foresees that circumstances occur or become apparent due to which the performance period cannot be complied with.

- (5) III 3 applies accordingly, if the business partner is in default with the performance of the services owed.
- (6) III 4 applies accordingly, if the business partner has been in default with the performance of the services owed.
- (7) The business partner will provide us proper advice before conclusion of the contract and suggest useful amendments to the service. In case the business partner shall state after conclusion of the contract, that the fulfilment of the service is jeopardized, he shall inform us without further request.
- (8) If the service owed includes the creation or conception of advertisements, PR concepts, layouts or the like, the business partner shall point out any obligations of cooperation to us and ask for our approval before using any drafts.
- (9) If the service owed by the business partner creates copyrighted works, the business partner grants us the corresponding rights of use on a permanent basis as previously agreed or, in case of absence of an agreement, as part of ordinary purposes. In case the service owed includes for example the conception of a new brand, a new advertising slogan, a new company logo or amendments of the latter, the business partner grants us the exclusive rights on a permanent basis starting from the time of approval.
- (10) In case our business partner owes the performance of an individual service or success, we are entitled to the legal rights accruing from defects. If the service fails to meet the contractual agreement, the business partner is obliged to rework or replace the service.

#### **V. Rules applying to all processes**

- (1) The price indicated in the contract is binding.
- (2) Unless otherwise agreed, we pay within 14 days with 3% cash discount or within 45 days net after fulfilment of the contract and receipt of the invoice. For timeliness of the payment due, the receipt of the transfer order at our bank shall be sufficient.
- (3) We shall be entitled to the full range of set-off and retention rights stipulated by law. Potential payments effected by us do not represent any acknowledgement of the billing of the business partner or the conformity of the service with the contract.
- (4) We reserve the rights, particularly right of use and property, to all images, technical drawings, calculations and further documents and/or information (hereafter also called "confidential information"), which are in our possession and have been transferred, communicated and/or made available to our business partner for the purpose of concluding the contract, preparing the offer or in the course of contractual negotiations. This confidential information and the know-how of our company communicated to our business partner in this course shall be kept secret by the business partner. This also applies correspondingly for confidential information, which we leave to the business partner to fulfil the contract and thus make them available to him.
- (5) Possible confidential information, which has been made available to the business partner, shall only be copied or stored by him to the necessary extent and shall inform us about it upon request. After performance of the contract, the business partner shall return them to us unsolicited, in case they have been handed over in physical form and if they are not needed to fulfil further orders. Digital copies shall be deleted. If the business partner considers deleting the data completely or partly as contradictory to legal obligations, he shall inform us, give reasons and ensure that further storage does not enable unauthorized use.
- (6) The content of certain specifications or certain requirements on our part regarding the processing or the composition of goods can represent a business secret of our company. The business partner undertakes to treat this information confidential, independently of the existence of a business secret. The disclosure of this information to third parties is only allowed after our approval. This also applies if the business partner engages subcontractors.
- (7) Legal liability provisions shall be applied. The seller is liable for negligence and without any limitation of the amount.



(8) Our business partner is only allowed to name our company as a reference and/or use protected brands, logos or other characteristics of our company after our express permissions. The corresponding permission is valid for three years.

(9) In case the business partner is a merchant, the place of jurisdiction for all disputes arising from the contract shall be our company's registered office.

(10) The contracts shall be subject to the law of the Federal Republic of Germany including the United Nations Convention on Contracts for the International Sale of Goods.

(11) Should individual provisions of these Terms of Purchase be invalid or void in whole or in part, this shall not affect the validity of the remaining provisions. The contractual partners shall undertake to agree on a regulation that comes closest to the economic purpose pursued with the invalid or void provision.