

# TOPAS GmbH

## Standard Terms and Conditions for Suppliers and Service Providers

### Standard Terms of Purchase (as at January 2016)

#### 1. Scope of Application

- (1) All orders placed by TOPAS GmbH (hereinafter referred to as the “Company”) with third parties (hereinafter referred to as the “Supplier”), including orders based on future business transactions, are governed exclusively by the following Terms of Purchase.
- (2) Diverging, conflicting or supplementing terms of the Supplier shall not become part of the agreement even if the Company does not expressly object to them or unreservedly accepts or pays for deliveries and services provided.
- (3) Amendments and divergences from these Terms of Purchase have to be in writing in order to be valid.

#### 2. Placing an Order

- (1) Offers made by the Supplier are binding on the Company only if they are confirmed in writing or by e-mail by the Company. Offers made verbally or in writing (including e-mails) are binding on the Supplier for at least 14 days after having been made. Orders placed shall be accepted in writing by the Supplier within three (3) working days. Partial quantities may be requested by telephone out of an overall quota agreed in advance in writing.
- (2) Errors in the order, especially clerical errors, entitle the Company to make subsequent amendments insofar as the error is obvious to the vendor and the subsequent amendment is acceptable. If the Supplier is unable to execute the order with the subsequent amendment, the Company may withdraw from the agreement without this giving rise to claims for damages for the vendor.

(3) Insofar as the financial situation of the Supplier deteriorates after conclusion of the agreement and before execution of the contractual delivery and/or performance to such an extent that proper performance of the agreement is placed in doubt or that doubts arise as to the Supplier's ability to perform, the Company may withdraw from the agreement without giving prior notice. Compensation claims against the Company based on or in connection with such withdrawal from the agreement are excluded.

### **3. Prices**

(1) Prices are fixed prices and exclude additional claims of the Supplier.

(2) The costs of packaging and shipment to the destination are included in the prices.

### **4. Delivery Dates, Inferior Performance, Default, Contractual Penalty, Force Majeure**

(1) Agreed delivery dates are binding and shall be strictly observed.

(2) Delivery periods shall be calculated as of the date of the order. Delivery dates mentioned in the Supplier's order confirmation that diverge from the order shall apply only with the Company's express written consent. Compliance with the delivery date is governed by proper and complete delivery to the delivery address indicated by the Company.

(3) The Company is under no obligation to accept partial deliveries that were not agreed. The Company is entitled to return such partial deliveries to the Supplier at the latter's risk and expense and/or to extend the payment term accordingly until the complete delivery has been received. Likewise, the Company is entitled to return any quantities delivered in excess of the agreed delivery quantity. Costs incurred by the Company owing to partial delivery or excess quantities not agreed, in particular costs for additional processing and any interim storage costs, shall be borne by the Supplier. This provision shall not affect statutory rights in case of default.

(4) The Supplier shall inform the Company promptly if it becomes aware of circumstances likely to cause a delay in delivery. If the Company agrees to a delay in delivery, the commencement of default shall be determined by the newly agreed dates. Force majeure shall relieve the Supplier only if the notification obligation is met.

(5) The Supplier shall compensate the Company for any indirect or direct damage it incurs due to delayed delivery or performance insofar as the Supplier and/or its vicarious agents can be held responsible for the delay. Acceptance of the delayed delivery or performance shall not constitute a waiver of compensation claims, which may also be made at a later point in time.

- (6) If the date of delivery or performance is exceeded for reasons for which the Supplier is responsible, the Company may require a contractual penalty amounting to 0.3% as a lump sum up to a maximum of 10% of the value of the order for each commenced working day of delay, unless the Supplier proves to the Company that the loss was lower. If the reservation of a contractual penalty is not made upon acceptance of a delivery, performance or subsequent rectification efforts [*Nacherfüllung*], the contractual penalty may nevertheless be required up to the final invoice.
- (7) If the agreed delivery dates are not observed for reasons for which the Supplier is responsible, in case of a commercial transaction with a fixed delivery date in the sense of Sec. 376, German Commercial Code (HGB), the Company may withdraw from the agreement immediately or otherwise after expiry of a reasonable extension granted by the Company while taking into account the circumstances of the individual case, and may require damages in lieu of performance owing to failure to perform.
- (8) The Supplier shall bear the risk of accidental loss or accidental deterioration of the goods until arrival at the destination.
- (9) In case of unforeseeable or inevitable harmful events, e.g. catastrophes of nature, industrial action or internal unrest and other cases of force majeure for which the Supplier is not responsible, the agreed delivery and performance periods and dates shall be extended by the duration of the circumstances and events preventing performance, provided that the Supplier notifies the Company in writing within 24 hours about the occurrence of an event of force majeure and its probable duration. If the event of force majeure lasts more than one (1) month after the end of the agreed date of delivery or performance, the Company may withdraw from the agreement in whole or in part. In case of partial withdrawal by the Company, the Supplier may withdraw from the agreement if it is no longer interested in the remaining delivery and/or performance.
- (10) Deliveries shall be made while providing the requisite information and designations. Otherwise the Company is entitled to refuse to accept the delivery. This also applies to deliveries made to a third party designated by the Company as being the recipient. Where goods are delivered on pallets, solely flawless, exchangeable Euro-pallets (DB standard) shall be used. Should the Company discover damaged pallets when processing the goods delivered, it is entitled to charge such pallets at their replacement value. The Company has to give its prior express consent to deliveries made on disposable or special pallets.
- (11) At its own expense the Supplier shall affix the labels required by law in Germany to sales packaging it supplies, in particular the "Der Grüne Punkt" label of Duales System Deutschland GmbH, unless otherwise agreed in an individual case. The Supplier shall indemnify the Company on first demand against possible claims for damages of third parties, in particular Duales System Deutschland GmbH, that are made against the Company owing to a culpable breach of labelling obligations by the Supplier.

(12) Insofar as possible and lawful the Company shall dispose of shipment packaging materials subject to the reservation that costs it thus incurs will be charged. Otherwise the Supplier shall collect shipment packaging promptly at its own expense from the delivery address we indicate or from the place of use and shall properly dispose of such packaging.

(13) Apart from this the Company is only under an obligation to accept deliveries if they have the agreed specification features or other warranted features.

## **5. Payment**

(1) Subject to divergent agreement, payments shall be made at the Company's discretion within 30 days less a 3% cash discount or within 45 days net amount.

(2) The payment term shall commence upon receipt of the invoice but not before receipt of the goods ordered.

(3) Payments have been made in due time by the Company if they have been authorized for payment by the Company to the Supplier's account before the end of the period determined individually in subsection (1) or (2) above.

(4) Invoices shall always bear the order number assigned by the Company when the order is placed, otherwise the payment period shall not commence.

## **6. Food Law and the Environment**

(1) The Supplier warrants (and represents) that the goods it supplies including their packaging comply with the provisions of German and EU law in force at any time and with the relevant prevailing opinion, in particular the guidelines of the German Food Code [*Deutsches Lebensmittelbuch*] and the underlying specifications or the particular conditions specified in the order, and especially with the requirements of the Bundesverband Naturkost Naturwaren [Federal Association Organic Foods and Natural Goods], and that they were manufactured or treated in flawless conditions, with the required care and while applying the required hygiene and quality controls.

(2) Insofar as deliveries of technical materials are concerned, including packaging materials, it is also warranted that they comply with the state of the art, in which respect commodity items especially shall comply with the recommendations of the Federal Institute for Risk Assessment (Bundesinstitut für Risikobewertung).

(3) Upon request the Supplier shall provide to the Company proof of its controls concerning compliance with such provisions.

(4) The Supplier grants the Company the right to verify compliance with the provisions of food law within its business following prior notification and to refuse to accept deliveries insofar as such checks reveal defects in quality.

- (5) The Supplier shall ensure that goods supplied can be traced back to their origin so that necessary measures can be taken where justified, especially where the goods pose a risk for life and limb. When selecting its own suppliers the Supplier shall likewise ensure that the goods can be traced back.

## **7. Claims Based on Defects**

- (1) The Supplier owes deliveries without defects in title and material defects.
- (2) The Supplier shall observe the safety and hygiene provisions in force at the destination.
- (3) Limitations on or the exclusion of liability by the Supplier shall not be recognized.
- (4) In case of a defect the Company shall be entitled to the statutory rights regarding defects. At its discretion it may choose to require rectification of the defect or delivery of a product that is free from defects. If the Supplier is unable to rectify defects or deliver a replacement within the reasonable extension granted to it, or if it is not necessary to grant an extension, the Company may withdraw from the agreement in accordance with the statutory provisions and may demand damages in lieu of performance as well as compensation for futile expenses or a reduction in price. Further statutory and/or contractual claims shall remain unaffected.
- (5) Claims based on defects shall become statute-barred within 24 months of the delivery date. Recourse claims of the Company against suppliers based on warranty claims made by consumers against the Company are governed by Secs. 478(2) and 479 of the German Civil Code (BGB). Such recourse claims shall not become statute-barred until two (2) months after the date on which the Company has satisfied recourse claims of other entrepreneurs or consumers based on such defects, but no later than five (5) years after the date on which the Supplier has delivered the object to the Company. Where a defect-free replacement product is delivered, the limitation period for claims based on defects shall start anew unless the Supplier denies the defect and explicitly performs for reasons of goodwill. This also applies in case of rectification insofar as the defect is based on the rectified defect or on the consequences of defective rectification.

## **8. Obligation to Notify Defects**

- (1) Obvious defects shall be notified by the Company promptly, no later than 14 days after delivery and/or acceptance of the delivery or performance. Where defects only become evident later on (hidden defects), the notification period shall commence as soon as the defect is discovered.
- (2) Where larger quantities of identical goods are delivered and/or where it is necessary to destroy

the original packaging in order to inspect the goods, the inspection obligation pursuant to Sec. 377, German Commercial Code (HGB), shall be deemed satisfied by spot checks provided such checks are capable of providing information about the qualities of all goods delivered. Where deliveries are made in tank trucks the Company may order additional control weigh-ins at the Supplier's expense.

(3) Defects in part of the delivery of identical goods discovered as a result of spot checks entitle the Company to notify a complaint about the entire delivery provided the results provide information about the qualities of all the goods delivered.

(4) Timely dispatch of the notification of defects will suffice in order to uphold the rights.

## **9. Third-Party Intellectual Property Rights**

(1) The Supplier shall ensure that the Company does not infringe intellectual property rights, especially recipes, held by third parties through contractual use and/or sale of the goods.

(2) The Supplier shall indemnify the Company against all claims made against it due to the infringement of an intellectual property right and shall assume the costs of safeguarding such rights where claims are based on a culpable breach of duties by the Supplier.

(3) The Company shall promptly inform the Supplier if recourse is had against it.

## **10. Product Liability**

(1) The Supplier's non-contractual product liability is governed by the statutory provisions.

(2) The Supplier shall indemnify the Company against all product liability claims that are based on a defect in the goods it supplies that was caused within its sphere of control and organization and for which it is liable in external relations. Subject to the same prerequisites, the Supplier is also liable for damage incurred in such cases by the Company following reasonable and necessary preventive measures in both nature and scope, for example by way of public warnings or recalls. The right of the Company to claim its own loss from the Supplier shall remain unaffected.

## **11. Confidentiality, Data Privacy Protection**

(1) Documents and samples made available to the Supplier by the Company shall be treated confidentially and may not be made available to third parties or otherwise utilized without prior written consent.

(2) The Company reserves the right to require such documents to be returned if the Supplier is in breach of the relevant obligations or if ongoing contracts have been completed.

(3) The Supplier shall keep secret all business data and information it obtains in connection with business relations with the Company, also about its customers, and shall impose a corresponding obligation on its employees and other vicarious agents. This does not apply to data available to the general public.

(4) The Company is entitled to store and use for contractual purposes all data, in particular personal data, made available to it by the Supplier in connection with the conclusion of contracts.

## **12. Place of Performance**

(1) Place of performance for deliveries and the provision of performance is the receiving office indicated in each case by the Company, and for all payments the head office of the Company.

(2) The risk shall pass at the first lockable gate of the Company.

## **13. Venue, Applicable Law**

(1) The head office of the Company is the venue.

(2) The legal provisions of the Federal Republic of Germany shall apply exclusively.

## **14. Final Provisions**

(1) Should individual provisions of these Terms of Purchase be or become invalid or in case of a gap therein, this shall not affect the validity of the remaining provisions hereof.

(2) The invalid provision shall be replaced by a valid provision which comes closest to the economic purpose of the invalid provision, or which fills the gap.