



## 1 Applicability

- 1.1 All supplier relationships are subject exclusively to these purchasing conditions. The supplier's opposing or deviating supply conditions or other terms and conditions, in particular ones included in its offer or order confirmation, are hereby rejected and do not apply. The same applies if the supplier's terms and conditions include provisions that go beyond these purchasing and supply conditions.
- 1.2 Subject to prior notice, we reserve the right to amend our terms and conditions with effect for the entire future relationship with the supplier. Such changes are deemed to have been accepted unless the supplier objects in writing within six weeks of such notice whereby a timely dispatch is sufficient to meet the deadline. We will separately advise the supplier as to this consequence in any notice of change.
- 1.3 The presently effective terms and conditions may be viewed at [einkaufsbedingungen.niederegger.de](http://einkaufsbedingungen.niederegger.de) at any time.

## 2 Formation, written form

- 2.1 We will confirm in writing any order placed by us orally, by telephone or facsimile. As long as and in so far as such confirmation is not provided, we may amend or revoke the order at any time unless and until the supplier has confirmed receipt by mail, email or facsimile.
- 2.2 As part of an ongoing business relationship, our orders are subject to the condition precedent that the manufacturing process, the ingredients or other parameters of the products supplied remain unchanged. In the event of a change, the supplier will inform us without prompting and before accepting any orders. Within five days of such notice, the supplier must provide us, free of charge, with a sample of the goods that facilitate a thorough examination. If we do not revoke the order within 14 days of our receipt of such sample, the condition precedent is deemed to have been met.
- 2.3 Order confirmations stating prices ex works (Lübeck) and binding delivery times must be received no later than one week after order receipt. We are entitled to demand a shorter term of acceptance. In the event that the supplier does not expressly refuse fulfillment within one week of order receipt or such other period as the order may state (whichever comes sooner), our order is deemed to have been accepted. We will draw specific attention to this fact when notifying the supplier of the changes.

## 3 Terms of delivery

- 3.1 The delivery period stated in the order is binding in nature. It is deemed to have been observed so long as the goods are delivered to the intended destination until the delivery deadline.
- 3.2 The supplier is obliged immediately to inform us in the event that, following the formation, it becomes aware of circumstances that make a delivery by the applicable deadline impossible.
- 3.3 Unless specifically agreed otherwise, the supplier must not deliver partial quantities.
- 3.4 The supplier arranges for shipment and/or the delivery of goods ex works (Lübeck) at its own risk and expense, with the risk of accidental destruction or accidental determination only passing to us upon delivery of the goods at the intended destination or if we are in default of acceptance. The supplier bears any damages resulting from its failure to effect delivery by the applicable deadline, along with the cost of expedited shipment necessary to meet such deadline.
- 3.5 Force Majeure, official measures, strikes and other disruptions that cannot be removed by reasonable means preclude default on both sides.
- 3.6 Shipping papers and notices must bear our order number.
- 3.7 The supplier must obtain our prior written consent before having third parties render the performance it owes hereunder, save for shipment/delivery.

## 4 Warranty (for defects in quality and title)

- 4.1 In the event that the goods supplied are defective, we are entitled to such warranty claims as applicable law may afford us. Specifically, we may, at our option, demand supplementary performance, remedial action and/or subsequent delivery.
- 4.2 We hereby expressly object to any limitation to the supplier's legal warranty claims whatsoever.
- 4.3 The warranty period for the items supplied to us equals three years unless a longer warranty period is agreed. The period of limitation applies likewise to other claims unless applicable law mandates a longer period.
- 4.4 The supplier hereby expressly represents and warrants that all goods supplied possess the characteristics of such samples as it may have provided. The supplier is aware that our demands regarding the quality of any goods supplied to us are stringent, which is why it will do whatever is necessary to deliver products of the highest quality. Subject to prior notice, we may monitor compliance with our quality standards at any time during the supplier's regular business hours. If and to the extent that such quality-control measures require the disclosure of business secrets, the supplier may tie its consent to the execution of a separate confidentiality agreement.
- 4.5 Insofar as we find fault with or cite defects in goods supplied, we are entitled to withhold, with regard to an appropriate portion of any agreed consideration, three times the amount of the costs likely to be incurred in connection with remedial action. Likewise, we are entitled to set off our claims for expenditures or damages incurred against the supplier's claim for compensation.
- 4.6 We must report in writing visible defects of goods within ten business days of receipt. A business day is any day between Monday and Friday, with the exception of statutory public holidays in Schleswig-Holstein. Hidden defects must be reported within two business days of discovery – in each instance, in writing. To be timely, it is sufficient if the report is dispatched by the end of the applicable period. In the event that defective goods or supplies we did not accept for other reasons are returned, such return shipment is undertaken at the supplier's risk and expense, with shipping costs charged to the supplier accordingly. Insofar as defective goods or supplies we did not accept for other reasons are held in our facilities because no immediate return has been requested, the goods are held entirely at the supplier's risk.
- 4.7 If goods manufactured for us are returned to the supplier due to a defect, the supplier must not resell or otherwise market such goods bearing our logo.
- 4.8 The supplier will provide any document and certificate needed to obtain export subsidies or pass cross-border formalities at its own expense.

## 5 Product liability and compliance with legal requirements

- 5.1 Any machines, apparatuses, vehicles, tools and other equipment used must meet applicable legal accident-prevention regulations (CE logo) and/or trade association (Gesamtverband der Süßwarenindustrie) requirements.
- 5.2 All goods supplied to us must meet the quality standards prescribed by the laws of the Federal Republic of Germany (Lebensmittel- und Futtermittelgesetzbuch – German Food and Feed Code, Lebensmittel-informationsVO – German Food Labeling Regulation, Strahlenschutzgesetz – German Radiation Protection Act, etc.) and be physiologically unobjectionable. Upon receipt of a respective request, the supplier must furnish suitable evidence to that effect within 14 days. This applies accordingly to the goods' traceability to any pre-supplier. Subject to prior notice, we may monitor compliance with these requirements at any time during the supplier's regular business hours.



- 5.3 For purposes of our finished product declaration, we always need current product specifications for any product supplied, including any and all allergen warnings, ingredients and nutritional data. The supplier will provide this information upon the delivery of goods, at the latest.
- 5.4 In the event that the supplier violates one of the foregoing obligations according to clauses 5.1 to 5.3, it must hold us harmless from third-party claims upon first demand, including but not limited to other claims, expenditures and other costs arising from or in connection with such violation. We are further entitled to demand that the supplier furnishes adequate security with respect to pending claims of recourse.
- 5.5 The supplier is obliged to obtain and maintain adequate product liability insurance with a coverage sum of no less than EUR 10 million per damaging event (personal injury or property damage).
- 5.6 The foregoing provisions do not affect our legal claims.

## 6 Payment, packaging

- 6.1 With payment made within ten days of our receipt of goods delivered free from defects, we may apply a 3% discount.
- 6.2 Invoices must be submitted in electronic form and include our order and cost centre numbers, otherwise we will be unable to process them.
- 6.3 We may, at our option, takeover of packaging provided at a reasonable price, in which case the supplier will submit a written proposal after we indicated our desire to do so in writing. If we do not accept the supplier's proposal, or no interest was expressed in making use of the supplier's packaging, we will return packaging to the supplier at its own risk and expense upon written request, deducting the full value invoiced accordingly.

## 7 Reservation of proprietary rights

The supplier must procure that the rights to any goods supplied passes to us without reservation. In the event that, following the formation, the supplier reserves any proprietary rights to any goods, such reservation is limited to a provision stipulating that the rights will be transferred after payment of the purchase price; any extended, expanded or other reservation of proprietary rights is expressly excluded.

## 8 No set off or assignment

- 8.1 Unless it's own claims have been effectively established, a decision on disputed claims is imminent or its claims are undisputed, the supplier must not set off his claims, or exercise rights of retention based on its' claims.
- 8.2 The supplier is not entitled to assign or pledge its' claims under our business relationship without our prior written consent.

## 9 Creditworthiness / supplier's capacity to supply

We are entitled to rescind the agreement if the supplier's creditworthiness or capacity to supply deteriorates to the point of the supplier refusing performance against consideration, as agreed, even after being placed on notice.

## 10 Confidentiality

The supplier must hold its business relationship with us in confidence and may disclose it to third parties only with our prior written consent. Moreover, it must hold in confidence any internal business process or secret it gleans as part of this supply relationship and bears liability for any damages resulting from its failure to comply with this duty of confidentiality.

These obligations do not apply to information that:

- is already evident – i.e., freely accessible to any third party – at the time it becomes known;
- the supplier properly received from a third party not bound to us by a duty of confidentiality after it becomes known;
- must be disclosed at the direction of any authority or public agency; or
- must be shared with a contractual partner's legal or tax advisers or other individuals bound by a professional duty of confidentiality for consulting purposes.

## 11 Privacy

We will store the personal data needed for the business relationship in line with applicable requirements under the EU General Data Protection Regulation (GDPR) and the Federal Data Protection Act.

## 12 Place of performance, legal venue, governing law

- 12.1 If the supplier is a merchant or a legal entity/special fund operating under public law, the following provisions apply:
- The place of performance is Lübeck.
  - Legal disputes arising from or in connection with the business relationship are settled exclusively by the courts of Lübeck. However, we are entitled to sue the supplier at its general place of jurisdiction.
- 12.2 The agreements under the business relationship are exclusively subject to German law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## 13 Severability

In the event that a provision of these terms and conditions is or becomes ineffective, the remaining provisions hereof remain in full force and effect, and applicable legal provisions apply instead of the ineffective provision safe of the International Private Law. Under no circumstances is an ineffective provision hereof replaced by the supplier's terms and conditions.

**J. G. Niederegger GmbH & Co. KG, Lübeck  
November 2019**