

# Purchase Terms & Conditions of **apetito AG** and **apetito convenience GmbH & Co KG**

- hereinafter referred to as Purchaser -

## 1. General terms, scope, contract closing, written form, confidentiality

- 1.1. All orders placed by the Purchaser are to be based solely on the terms and conditions described herein; the Purchaser will not accept any conflicting or deviating terms and conditions unless expressly having agreed to their acceptance in writing. The acceptance of services and deliveries or a payment, even without the Purchaser's objection, shall in no case be construed as an approval of the standard terms and conditions of the Contractor.
- 1.2. These order terms & conditions are only valid for companies pursuant to § 310, Par. 1 BGB (German Civil Code).
- 1.3. Apart from these terms & conditions, all relevant statutory laws apply.
- 1.4. There will be no reimbursements granted for visits or the preparation of offers, projects, drafts or the delivery of samples.
- 1.5. Orders, call-offs, contracts of any kind and their modifications or amendments are only valid when issued in writing. The written form is also deemed valid when the statement is issued by fax, email or other forms of data transfer. A signature is not required. The necessity for the written form also applies should the rule of using the written form be revoked. Oral agreements before or during the conclusion of the contract must be accepted by the Purchaser in writing to become effective.
- 1.6. The Contractor undertakes to keep the contract conclusion confidential and may refer to the business relationship with the Purchaser in publications, e.g. promotional material and reference lists, only after receiving prior written consent from the Purchaser.
- 1.7. Any information about the Purchaser that is or becomes known to the Contractor in connection with this contractual relationship, except for general or legitimately acquired information, may not be disclosed or made available to any third party.

## 2. Passing of risk, dispatch, prices, goods-in, ownership

- 2.1. The risk will transfer to the Purchaser only when deliveries, including installation and assembly or services, have been accepted or when deliveries excluding installation and assembly have been received at the specified point of delivery.
- 2.2. A packing slip or delivery note specifying the content, quantity, lot coding and full purchase order indicator has to accompany every delivery.
- 2.3. Deliveries and services over and above what have been agreed, and partial deliveries and services, are only accepted following prior consent of the Purchaser.
- 2.4. The place of destination will be indicated on the individual order by the Purchaser. Costs incurred through non-compliance are to be covered by the Contractor.
- 2.5. If deliveries arrive earlier than specified, the Purchaser reserves the right to return the shipment at the expense and risk of the Contractor. If early deliveries are not returned, the goods will be stored at the expense and risk of the Contractor either at the Purchaser or an external warehouse operator designated by the Purchaser until the agreed dispatch date. Payment of invoice is effected in due time considering the agreed delivery date.
- 2.6. Ownership of the goods is transferred to the Purchaser at the time of handover. The Contractor guarantees the non-existence of any third party rights and provisions (e.g. retention of title, lien) and consequently releases the Purchaser from any third party claims.

## 3. Delivery date, delayed delivery, contract penalty

- 3.1. Agreed dates are binding. The punctuality of a delivery without installation or assembly is determined by the specified point of delivery, whereas the timeliness of deliveries without installation or assembly and of contractual services is determined by the time of acceptance.
- 3.2. Irrespective of any legal claims by the Purchaser, the Contractor is committed to immediately inform the Purchaser in writing if circumstances should occur or are foreseeable which are likely to delay a timely delivery.
- 3.3. In cases of delayed delivery by the Contractor, the Purchaser is entitled to claim a contract penalty of 0.2% of the total purchase order net value for each calendar day that the delivery is delayed but limited to a sum of 5% of the total purchase order net value. The Purchaser reserves the right to any further legal claims; should these be enforced, the forfeited contract penalty for already enforced claims will be deducted. The Purchaser is entitled to declare the contract penalty retention until the time of final payment.

## 4. Prices, invoices, payment, summation, retention, assignment of claims

- 4.1. All agreed prices are fixed prices covering delivery to the destination point to include packaging, transport, customs, "green point" fees and transport insurance, if not otherwise stipulated in the contract.
- 4.2. Correct invoices ready to be checked include the complete purchase order indicator and are subject to currently valid accounting regulations pursuant to prevailing tax laws and must be forwarded to the agreed billing address.  
Incorrectly issued and submitted invoices are not considered as having been received by the Purchaser until properly rectified.
- 4.3. If not otherwise agreed, payments will be made within 14 days at a 3% discount or within 30 days without discount following delivery or acceptance of goods and receipt of a proper invoice. The discount is also permitted in case the Purchaser makes a summation or retains payment due to deficiencies. The payment period for the amount retained due to deficiencies begins as soon as these deficiencies have been fully rectified.
- 4.4. If the Contractor is obligated to provide documentation, operating instructions or confirmation of material testing, the payment period for invoices does not begin until the Purchaser receives the required documentation or test confirmation.
- 4.5. The act of payment neither implies that an invoice is correct nor that a delivery/service is considered fulfilled as stipulated in the contract.
- 4.6. The Contractor's right to summation is limited to counter claims that have been legally determined, are undisputed or recognised by the Purchaser.  
The Contractor may only execute retention rights if these counter claims arise from the same contract or have been legally determined, are undisputed or recognised by the Purchaser.
- 4.7. Before assigning the right of receivables from the Purchaser to a third party, the Contractor must obtain the written consent of the Purchaser.

## 5. Termination or withdrawal for a reasonable cause

The Purchaser may terminate the contract for a reasonable cause or withdraw from the contract, especially in cases when the Contractor has filed an application for bankruptcy or suspended payments (not only temporarily) or if insolvency proceedings have started or are rejected for insufficient assets. This does not affect the right of the Purchaser to claim damages.

## 6. Execution of deliveries / services, amendments

- 6.1. The Contractor undertakes to carry out all deliveries / services professionally and pursuant to the agreed specification, in compliance with appropriate up-to-date legal clauses, and also regulations and guidelines of public authorities, employer's liability insurance associations and trade associations.
- 6.2. Foodstuffs, other substances in the food production, packaging material for food products and other materials supplied that will have direct contact with food in the course of the manufacturing or packaging process must be of an agreed quality such that they are suitable for the stated purposes and known to the Contractor and legal according to all appropriate clauses of the currently valid German Food Law, especially the Foodstuffs, Commodities and Feed Act (LFGB, amongst others §§ 30,31), the Commodities Regulation (BedGegstV, amongst others §§ 7,8,11), the Regulation on Deep-frozen Foodstuffs (TMLV, amongst others § 4) and the applicable valid EU Regulations and those EU Guidelines implemented by the German legal system. A specification must be presented for all foodstuffs and any packaging delivered to the Purchaser, irrespective if designated for either manufacturing or test purposes. Specifications undergoing changes must be updated by the Contractor on time and made available to the Purchaser immediately.
- 6.3. The Purchaser may demand changes to the delivery / service object, even after the contract has been concluded, as long as these changes are reasonable for the Contractor. The impact of such a contract change to both parties, especially with respect to additional or reduced costs and delivery dates, has to be duly considered.
- 6.4. The Contractor agrees to visits by representatives of the Purchaser at any time during normal working hours, without prior notification, to perform random checks of the quality assurance measures including relevant documentation implemented by the Contractor.

## 7. Deficiency claims, limitation periods

- 7.1. The Purchaser has the right to select the type of post-performance in case of a deficiency, pursuant to paragraph 439 of the German Civil Code (BGB) which is also applicable for works and services contracts.
- 7.2. In case of an indeterminate obligation, the procurement risk is with the Contractor insofar that the Contractor is liable for the goods being free of deficiency regardless of who is at fault.

- 7.3. In addition to the statutory deficiency claims, the Purchaser has the right to remedy those defects on its own or claim reimbursement of the effected expenses in case the Contractor fails to remedy the deficiency of the delivered product or works within the subsequent deadline fixed for post-performance, unless the Contractor is justified in refusing fulfilment. In this regard, the legal clause on self-remedy valid for works and services contracts (§ 637 BGB - German Civil Code) is also applicable for purchasing contracts. In case an immediate risk of significant damage must be averted, the Purchaser is entitled to remedy the deficiency internally or through a designated third party or to obtain a replacement at the expense of the Contractor without prior notice to the Contractor when there is not enough time to brief the Contractor on the imminent damage and give them the opportunity to correct the deficiency due to the urgency of the circumstances.
- 7.4. The limitation period for deficiency claims is 36 months when not otherwise expressly agreed, or when statutory clauses do not provide for a longer limitation period. The limitation period begins with handing over the delivery object to the Purchaser or third party designated by the Purchaser at the point of delivery or the application site as defined by the Purchaser. The limitation period for delivered goods requiring assembly at the point of delivery or application site begins once the assembly has been completed and a successful test run has been executed without objections. When an acceptance is required pursuant to statutory or contractual regulation, the limitation period begins upon successful technical approval. In case the agreed assembly, trial operation or technical approval has to be postponed for reasons not caused by the Contractor, the limitation period begins latest 6 months following the receipt of the delivered goods. If a work and services contract has been concluded, as a rule the limitation period never starts before the Purchaser's acceptance or technical approval has been given. Claims arising from deficient construction work and deficiencies in materials utilised according to their intended use in the construction of a building subsequently causing defects have a limitation period of 5 years following the technical approval of the construction work or the delivery of materials.
- 7.5. Should the Contractor fulfil its obligation for post-performance by delivering a replacement, the limitation period for the product / works supplied as replacement re-starts subsequent to delivery / acceptance, unless the Contractor has consented to delivering a replacement only for reasons of goodwill, to avoid disputes or in the interest of continuing the existing supply relationship.
- 7.6. The limitation periods for deficiency claims are suspended as long as the Contractor has clearly not rejected in writing to a timely notice of the defect by the Purchaser.
- 7.7. The Purchaser does not waive the right to make deficiency claims, or any other rights, by confirming the receipt of deliveries and endorsing drawings presented by the Contractor.

## **8. Packaging**

- 8.1. Goods are to be packed such that transport damages are avoided. Packaging material is to be limited to achieving its intended purpose. Only environmentally acceptable packaging materials may be used.
- 8.2. When delivering foodstuffs, other substances in the food production, packaging material for food products and other materials that will have direct contact with food in the course of the manufacturing or packaging process, the product and transport packaging and means of transport utilised must be in a hygienically unobjectionable condition and suitable for storing deep-frozen products. In particular, the Contractor undertakes to guarantee that the product wrapping is free of any substances not suitable for food contact, that the migration limits as defined in the Commodities Act are not exceeded and none of the packaging components consists of either glass, metal or wood. All shipments are to be labelled pursuant to the relevant specifications.

## **9. Product liability, exemption**

- 9.1. When pursuant to domestic or foreign product liability regulations, claims are filed against the Purchaser due to the deficiency of their product, the cause of which can be traced back to a commodity delivered by the Contractor, then the Purchaser has the right to demand compensation for damages to the extent that the deficiencies are attributed to the Contractor's materials.
- 9.2. As part of the Contractor's product responsibility, the Contractor undertakes to indemnify the Purchaser from liabilities for any claims by third parties immediately upon the initial request of the Purchaser and to reimburse any expenses arising from or in connection with a recall carried out by the Purchaser and effected as a result of the deficient commodity delivered by the Contractor.
- 9.3. The Contractor undertakes to maintain product liability insurance with an appropriate lump sum coverage of at least € 2 mil. for each personal injury / property damage, covering all product liability risks incl. the recall risk. At the Purchaser's request, the Contractor will furnish proof of such coverage. In case the Purchaser is entitled to further claims for damages, they shall not be affected thereby.

## **10. Protective rights**

- 10.1. The Contractor undertakes to guarantee that no rights of third parties are infringed upon in connection with the delivery/service object, neither in Germany nor in the country of destination to the Contractor's knowledge.
- 10.2. Should third parties assert a claim against the Purchaser with respect to infringing upon any protective rights, the Contractor undertakes to exempt the Purchaser from any such claim. Each contract party will notify the other one immediately in writing in case a third party asserts a claim against any one of them with respect to infringing upon any protective rights.
- 10.3. If the utilisation of the goods supplied / services rendered as specified in the contract is impaired due to protective rights claimed by a third party, the Contractor must undertake - without prejudice to any other contractual or legal provision - at their own expense and in a co-ordinated effort with the client, to either obtain the unlimited right from the third party holding the protective right to use the goods supplied / services rendered without any extra cost to the Purchaser and as specified in the contract or to make any changes to the goods supplied / services rendered that guarantee that an infringement of protective interests ceases to exist, nevertheless, still fulfilling contract provisions.

## **11. Work documents, equipment, tools, samples, materials**

- 11.1. The Purchaser will retain exclusive ownership of all specifications, samples, production facilities, equipment, tools, profiles, measuring and testing equipment, materials provided, drawings, plant specification lists, artwork and similar materials which it has made available to the Contractor. They may not be used by the Contractor for external purposes outside of the contract nor duplicated or made available to third parties and must be stored by the Contractor with appropriate due diligence, at no extra cost and separate from any other objects owned by the Contractor. They must be labelled as property of the Purchaser, kept confidential, and without being requested, returned to the Purchaser once the purchase order has been fulfilled or otherwise on direct request of the Purchaser. The Purchaser's deficiency claims are without prejudice to the approval of plans, final drawings, calculations etc. All rights of use for drafts, proposals, drawings or data of any kind remain in the exclusive ownership of the Purchaser. Items produced by the Contractor according to the Purchaser's documents may neither be made available nor relinquished nor sold to third parties.
- 11.2. Processing and reworking of Purchaser's material will always be carried out for the Purchaser, who then immediately takes proprietorship of the new or reworked item. If this is not possible for legal reasons, then the Purchaser and Contractor agree that at every point and time of the processing or reworking, ownership of the new or reworked item is acquired by the Purchaser. The Contractor must exercise due diligence in safeguarding the new / reworked item at no charge to the Purchaser.
- 11.3. Ownership of any moulds, tools, samples, artwork etc. invoiced to the Purchaser is transferred to the Purchaser upon payment. They must be stored by the Contractor at no extra cost on behalf of the Purchaser and must be relinquished upon request of the Purchaser.

## **12. Place of performance, jurisdiction, governing law, contractual language, etc.**

- 12.1. Unless stated otherwise, the place of performance for deliveries/services shall be the place of destination as determined in the order.
- 12.2. If the Contractor is a merchant, a legal person under public law or a public fund, jurisdiction shall be the domicile of the Purchaser. The Purchaser reserves the right, however, to put forward claims at the general place of jurisdiction of the Contractor.
- 12.3. In addition, the laws of the Federal Republic of Germany shall be applicable. The application of the Convention on International Sale (CISG) of the United Nations from 11 April 1980 is excluded.
- 12.4. The contractual language is German. Insofar as the contractual partners will use another language, the German version shall have precedence.
- 12.5. Should any provision or part of a provision hereafter be or become ineffective, the effectiveness of the remaining provisions shall not be affected.