



**KÜNDIG**  
FOOD INGREDIENTS SUPPLIER

## **Kündig Nahrungsmittel GmbH & Co. KG Deutschland**

### **General Terms and Conditions of Purchase**

Status: 31<sup>st</sup> August 2021

#### **1. General - scope of application**

- 1.1. Our General Terms and Conditions of Purchase shall apply exclusively to all contracts for the purchase of goods and services by us, Kündig Nahrungsmittel GmbH & Co. KG Deutschland, with the supplier.
- 1.2. We do not recognise any terms and conditions of the supplier which conflict with or deviate from these General Terms and Conditions of Purchase, in particular the supplier's general terms and conditions of sale, unless we have expressly agreed to their validity in writing. Our General Terms and Conditions of Purchase shall also apply if we accept the Supplier's delivery without reservation in the knowledge that the Supplier's terms and conditions conflict with or deviate from these General Terms and Conditions of Purchase.
- 1.3. All agreements made between us and the supplier for the purpose of executing the delivery of goods by the supplier must be recorded in writing.
- 1.4. These General Terms and Conditions of Purchase shall only apply to entrepreneurs in accordance with § 14 BGB (German Civil Code).

#### **2. Offers - offer documents**

- 2.1. The supplier is obliged to send us a written order confirmation referring to our order number without delay, but at the latest within three working days of receipt of a written order.
- 2.2. The supplier shall bear all costs incurred in the preparation and submission of the offer.
- 2.3. The supplier undertakes to enclose the following documents and samples with offers and order confirmations, unsolicited and free of charge:
  - 2.3.1. with regard to organic goods proof of a valid organic certification in accordance with the actual German and European statutory provisions.
  - 2.3.2. with regard to food and non-food goods the corresponding product specification.
  - 2.3.3. with regard to foodstuffs all analyses, in particular pesticide analyses and microbiological analyses of an accredited laboratory.
  - 2.3.4. in respect of food contact materials a declaration of conformity in accordance with the German and European statutory provisions, in particular in respect of plastic food contact materials



- 2.3.5. for all other food contact materials appropriate evidence of suitability for the intended use, including declarations of no objection, migration tests, etc.
- 2.3.6. with regard to any export of the goods to other countries within and/or outside Europe the written documents and declarations required or useful for export, e.g. certificates of origin, health certificates, certificates of harmlessness, etc.
- 2.3.7. with regard to all goods for which the application of a free trade agreement, preferential origin system, etc. exists, the relevant proofs (supplier's declaration, preferential origin certificate/invoice) to prove the application.
- 2.3.8. with regard to all goods ordered under the condition "purchase on a sample basis", samples in sufficient quantity, in case of "purchase on analysis" analyses of a laboratory accredited in the EU.
- 2.3.9. certifications to demonstrate membership and compliance with codes of conduct (e.g. BSCI Code of Conduct, Transfair, Rainforest Alliance or similar initiatives).

**3. Purchase on the basis of samples or analysis results - condition precedent**

- 3.1. In case of purchase on the basis of a sample or analysis, the contract is subject to the condition precedent that we approve the sample or analysis in writing.
- 3.2. The approval period is three weeks after receipt of the sample or the analysis; it begins on the day following receipt of the sample or the analysis by us. If we do not send acceptance within the period, the sample or the analysis shall be deemed to be rejected.
- 3.3. The approval period shall be suspended in the period between 24<sup>th</sup> December of one year and 6<sup>th</sup> January of the following year due to our company holidays.

**4. Prices - terms of payment**

- 4.1. The price stated in the order is binding.
- 4.2. Our orders are based on the Incoterms 20120. Unless otherwise stated in the order, "free duty paid (DDP) [named place of delivery], Incoterms 2020" shall apply, including packaging.
- 4.3. The prices are exclusive of the statutory value added tax.
- 4.4. We can only process invoices of the supplier if they state the order number shown in our order. The supplier shall be responsible for all consequences arising from non-compliance with this obligation, unless he can prove that he is not responsible.
- 4.5. We are entitled to rights of set-off and retention to the extent permitted by law.
- 4.6. The supplier may not assign claims to third parties, either in whole or in part, without our written consent.



**5. Delivery time, delivery and labelling of goods**

- 5.1. The delivery time stated in the order is binding for the supplier.
- 5.2. The supplier is obliged to inform us immediately in writing if circumstances occur or become apparent to him which indicate that the stipulated delivery time cannot be met.
- 5.3. In the event of a delay in delivery, we shall be entitled to the statutory claims. In particular, we shall be entitled to claim damages and rescission after the fruitless expiry of a reasonable period of grace. If we demand damages, the supplier shall be entitled to prove to us that he is not responsible for the breach of duty.
- 5.4. Unless otherwise agreed in writing, delivery shall be made "free of duty (DDP) [named place of delivery], Incoterms 2021".
- 5.5. The Supplier shall send a dispatch note for each individual consignment on the day of dispatch, separately from the goods and the invoice. The delivery must be accompanied by a delivery note and packing slip. In the case of shipment by ship or air, the shipping documents and invoices must state the name of the shipping company and the ship or the name of the airline.
- 5.6. The supplier must select the most favourable and most suitable means of transport for us.
- 5.7. The supplier is obliged to state our order number and - if communicated by us - article number as well as type, quantity and unloading point of the delivery on all shipping documents, delivery notes, packing slips, consignment notes and invoices; if he fails to do so, we are not responsible for the resulting delays in processing.
- 5.8. In addition, we are entitled to demand 1% of the total net order value as a penalty for each commenced week of delay, but not more than 5% of the total net order value. The supplier reserves the right to prove lower damages.
- 5.9. Our unconditional acceptance of the delayed delivery or service does not constitute a waiver of the claims for compensation due to the delayed delivery or service.
- 5.10. The goods must be marked legibly and visibly according to type and quantity in accordance with the German and European statutory provisions. Unless otherwise agreed, foodstuffs must be marked on the outer packaging with at least the best before date, date of manufacture, article description, article number and batch.
- 5.11. Allergens contained in the goods shall be marked and highlighted separately by the supplier in accordance with the German and European statutory provisions.
- 5.12. The Supplier shall pack, label and ship the goods in accordance with the agreed specification in such a way that damage during transport is excluded and efficient unloading, handling and storage of the Goods is possible.



**6. Examination of defects - liability for defects**

- 6.1. We shall inspect the goods within a reasonable period of time for any deviations in quality and quantity. The complaint shall be deemed to be in good time if it is received by the supplier within a period of ten working days from receipt of the goods or, in the case of hidden defects, from discovery.
- 6.2. Payments made by us shall not be deemed to be an acknowledgement that the goods or services have been provided in accordance with the contract or that they are free of defects, nor shall they be deemed to be an acknowledgement of proper invoicing.
- 6.3. We are entitled to the statutory claims for defects in full. In any case, we are entitled to demand that the supplier remedies the defect or delivers a new item, at our discretion. We expressly reserve the right to claim damages.
- 6.4. The supplier warrants that the items delivered by him and the services rendered by him correspond to the specifications the intended use, the current state of the art and the relevant German and European statutory provisions and other regulations. If deviations from these regulations are necessary in individual cases, the supplier must obtain our written consent before executing the deviation. The supplier's warranty obligations are not affected by our consent.
- 6.5. We are entitled to remedy the defects ourselves at the supplier's expense if the supplier is in default.
- 6.6. The limitation periods shall be determined in accordance with the statutory provisions.

**7. Special liability for defects in food, packaging for food and food contact materials**

- 7.1. Unless specific quality criteria have been agreed, the goods and their packaging must be at least of merchantable quality. Any quality and quantity details contained in the order as well as in our specifications must be complied with.
- 7.2. The supplier warrants in particular,
  - 7.2.1. that the delivered goods and their packaging are true to sample and comply with the contractual agreements.
  - 7.2.2. that the goods and their packaging comply with the German and European statutory provisions; in the case of goods that are foodstuffs, these are in particular Regulation (EC) No 178/2002 and the LFGB (German Food and Feed Code).
  - 7.2.3. that the goods and their packaging comply with the agreed specifications
  - 7.2.4. that the goods delivered by the supplier and their packaging are unrestrictedly marketable both in the country of production and on the respective sales markets made known to the supplier;
  - 7.2.5. that the maximum levels for contaminants and mycotoxins comply with Regulation EC No. 1881/2006;



- 7.2.6. that flavourings and the flavourings used in the goods comply with the requirements of the EC Flavour Directive No. 1334/2008;
- 7.2.7. that goods of Japanese origin comply with Regulation (EU) No. 561/2012;
- 7.2.8. to supply only goods that meet the requirements of Regulation (EC) No. 396/2005 (Pesticide Residue Maximum Level Regulation) also in so far as pesticide residues are below the limits even if the upper value of the range of the results of the analysis is taken as a basis;
- 7.2.9. that organic produce complies with the German and European statutory provisions, in particular Regulation (EC) No. 834/2007 (EC Organic Regulation), as well as the guidance values published by the Bundesverband Naturkost Naturwaren (BNN) e.V. at [www.n-bnn.de](http://www.n-bnn.de);
- 7.2.10. that the goods have not been treated with ultraviolet or ionising radiation;
- 7.2.11. that the goods delivered by him, in accordance with the relevant provisions, are not genetically modified foodstuffs and/or do not contain any foodstuffs, additives or flavouring substances produced from genetically modified organisms, with the exception of accidental or technically unavoidable contamination with genetically modified material up to a threshold value of 0.1% relative to the individual ingredient;
- 7.2.12. that the goods do not have to be labelled with regard to genetic engineering labelling requirements;
- 7.2.13. that the certificates and documents within the meaning of Section 2.3 are authentic and correct in terms of content and
- 7.2.14. that food contact materials and articles comply with the German and European statutory provisions, in particular with Regulation (EU) No. 1935/2004.
- 7.3. Insofar as the goods are mixed, combined and/or processed by us with other items, the supplier warrants the usability and marketability both with regard to the manufacturing process and the end product. The supplier is obliged to inform us without being asked of any concerns regarding a corresponding use of the goods, in particular to indicate any special features which we have to take into account with regard to the use of the goods in production.
- 7.4. Any change in quantities and/or composition of the goods in the lists of ingredients (recipe changes) as well as packaging changes in deviation from the product specification agreed by us with the supplier must be notified to us in writing at least six months before the planned implementation. Corresponding changes always require our express written consent, unless required by mandatory statutory provisions.



- 7.5. The supplier warrants proper and complete controls of the goods during the production process on the basis of the current legal situation and the current state of the art.
- 7.6. We are entitled to exclude the assignment of third party suppliers if doubts about the quality standards of the third party suppliers are justified.
- 7.7. The supplier warrants the continuous and complete traceability of the goods delivered by him in accordance with the respective applicable German and European statutory provisions, the regulations and guidelines of authorities, professional associations and trade associations. In addition to the goods themselves, the object of traceability for each good is the ingredients, raw materials, additives and auxiliary materials etc. used, the time of manufacture/production, the packaging materials and the course of the manufacturing process.
- 7.8. In addition to Section 7.7, , the supplier is obliged, in the case of foodstuffs, food packaging and food contact materials, to provide us upon request with evidence of the entire supply chain of the goods delivered by him and their ingredients or related materials by name up to their origin. Upon request, the certificates for these upstream suppliers shall be presented to us. The supplier warrants that it monitors the upstream suppliers and continuously carries out incoming goods inspections that meet at least the requirements customary in the industry.
- 7.9. If necessary (administrative complaint, customer complaint, etc.), the supplier is obliged to provide us immediately upon request with the necessary information/information regarding certain goods in demand. The assertion of further claims against the supplier remains unaffected by this.
- 7.10. In the case of goods whose labelling shows or must show expiry dates (best before date, date of use, etc.), the remaining term, i.e. the time available to us for processing and/or marketing the goods, must amount to at least 80% of the total term (span between production and date stated), calculated from the day following receipt of the goods. Deliveries of goods which do not meet this requirement shall be deemed to be defective.
- 7.11. Insofar as the object of the supplier's delivery is packaging material which we use and deploy, the above provisions shall apply accordingly, i.e. the supplier warrants the unrestricted marketability and usability of the packaging material. In particular, the supplier shall warrant that this packaging material does not have any adverse effects on the packaged product.
- 7.12. If a warning is issued publicly, in particular in the media, against buying and using products of a comparable type or with comparable ingredients because of actual or alleged health hazards, we are entitled to cancel orders that have not been delivered and to return goods that have already been delivered against reimbursement of the purchase price, in particular if demand for the goods is expected to cease as a result of the warning. The right of cancellation must be exercised by us within one month after the first publication of the warning.





- 7.13. The supplier warrants that the vehicles used for the delivery are suitable for transporting food. In particular, the vehicles must not contain any pests, foreign odours, dust, moisture, mould, foreign bodies or other negative influences. The same applies to the respective loading and unloading area and interim storage. In particular, the supplier warrants not to use vehicles whose cargo space is only completely or partially enclosed by a tarpaulin.

**8. Product liability - indemnification - liability insurance protection**

- 8.1. Insofar as the supplier is responsible for a product damage, he is obliged to indemnify us from claims for damages by third parties on first request, insofar as the cause lies within his area of control and organisation and he is liable himself in the external relationship.
- 8.2. Within the scope of his liability for damages within the meaning of Section 8.1, the supplier is also obliged to reimburse any expenses pursuant to §§ 683, 670 BGB (German Civil Code) or pursuant to §§ 830, 840, 426 BGB (German Civil Code) that arise from or in connection with a recall action carried out by us. We will inform the supplier - as far as possible and reasonable - about the content and scope of the recall measures to be carried out and give him the opportunity to comment. Other statutory claims shall remain unaffected.
- 8.3. The supplier undertakes to maintain a product liability insurance with a coverage of at least € 1 million; if we are entitled to further claims for damages, these shall remain unaffected.

**9. Third party rights**

- 9.1. The supplier warrants that in connection with his delivery no rights of third parties within the Federal Republic of Germany and, insofar as we export the goods abroad and inform the supplier of this in writing, no rights of third parties in the respective country of destination are infringed.
- 9.2. If claims are made against us by a third party on account of an infringement of rights within the meaning of Section 9.1, the supplier shall be obliged to indemnify us against such claims upon first written request; we shall not be entitled to make any agreements with the third party - without the written consent of the Supplier - and in particular not to conclude a settlement.
- 9.3. The supplier's obligation to indemnify us relates to all expenses which we reasonably incur from or in connection with the claim by a third party.
- 9.4. We reserve the property rights and copyrights to illustrations, drawings, calculations, recipes, provisions and other documents which we make available to the supplier.

**10. Retention of title**

We do not recognise any retention of title by the supplier.



**11. Secrecy**

- 11.1. The Supplier is obliged to keep all illustrations, drawings, calculations, specifications and other documents and information (hereinafter referred to as "Information") received strictly confidential.
- 11.2. The Information may only be disclosed to third parties with our written consent.
- 11.3. The Information is to be used exclusively for production based on our order; after termination of the business relationship, it is to be returned to us without request. The obligation to maintain secrecy shall also apply after the execution of this contract; it shall expire if and to the extent that the manufacturing knowledge contained in the illustrations, drawings, calculations and other documents provided has become generally known.

**12. Code of Conduct - Employment Health and Safety - Environmental Protection**

- 12.1. As a company, we expect all suppliers in the supply chain to behave in a socially just and sustainable manner and we demand that all activities of suppliers involved in the supply chain are in social and environmental balance. The supplier undertakes to behave accordingly.
- 12.2. In particular, the supplier undertakes to comply with all applicable German and European statutory provisions and regulations, in particular those relating to employment health and safety and environmental protection, minimum industrial standards, conventions of the International Labour Organization (ILO) and the United Nations and all other relevant statutory provisions, whereby those regulations are to be applied which impose the strictest requirements.
- 12.3. The supplier is in particular obliged to select environmentally friendly and recyclable input materials, to use low-emission and low-pollution technologies, to erect structures that are easy to dismantle and disassemble and to use energy and resource-saving solutions.
- 12.4. The supplier is obliged to comply with codes of conduct (e.g. BSCI Code of Conduct, Transfair, Rainforest Alliance or comparable initiatives) to which he has subscribed.
- 12.5. We reserve the right to verify compliance with the codes of conduct in the course of our own audits.

**13. Applicable law - place of jurisdiction - place of performance**

- 13.1. Unless otherwise expressly stipulated in these General Terms and Conditions of Purchase or our orders, all declarations within the scope of the business relationship with the supplier must be made in writing (§ 126 BGB (German Civil Code)). The written form shall be deemed to be satisfied by compliance with the electronic form (§ 126a BGB (German Civil Code)) or the text form (§ 126b BGB (German Civil Code)), unless the electronic form or the text form are expressly excluded in these General Terms and Conditions of Purchase or our orders.





- 13.2. The laws of the Federal Republic of Germany shall apply, with the exception of the provisions of international private law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply.
- 13.3. Place of jurisdiction is Ritschenhausen; however, we are also entitled to sue the supplier at the court of his place of business.
- 13.4. In the case of contracts with suppliers without a place of jurisdiction in Germany, disputes arising from or in connection with this contract may, at the discretion of the respective claimant party, also be submitted to a court of arbitration for decision in accordance with the following provisions:
- 13.4.1. In the case of suppliers domiciled in the People's Republic of China, the following arbitration clause shall apply in the event of the exercise of the right of option under Section 13.4: Any dispute arising from or in connection with this Contract shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC) for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties. The seat of arbitration shall be Beijing. The hearing shall be held in Beijing. The arbitration panel shall consist of three arbitrators appointed in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The chairman of the arbitral tribunal may not be a citizen of Germany or the People's Republic of China. The language of the Arbitration Tribunal shall be English.
- 13.4.2. In the case of suppliers having their registered office outside the People's Republic of China, the following arbitration clause shall apply in the event of the exercise of the right of option under Section 13.4: All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by a court of arbitration consisting of three arbitrators appointed in accordance with the ICC Rules of Arbitration. The chairman of the court of arbitration may not be a national of Germany or of the supplier's country of residence. The language of the arbitration tribunal shall be English. The seat of the arbitration court is Frankfurt.
- 13.5. Unless otherwise stated in the order Ritschenhausen shall be the place of performance.
- 13.6. Should any provision of these General Terms and Conditions of Purchase be invalid, unenforceable or void in whole or in part, the validity of the remaining provisions shall not be affected.