



**KÜNDIG**  
FOOD INGREDIENTS SUPPLIER

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

### **General Terms and Conditions of Sale**

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

Our present General Terms and Conditions of Sale apply to all deliveries with regard to goods or products manufactured or traded by us (see Section 2.) and to contract processing carried out by us (see Section 3.). The general provisions under Section 1. apply to all our deliveries and services, irrespective of whether they concern products manufactured or traded by us or contract processing carried out by us.

#### **1. General provisions**

##### **1.1. Scope of the General Terms of Sale**

- 1.1.1. Our offers, deliveries of goods and services (e.g. contract processing) to companies within the meaning of § 14 BGB (German Civil Code) are exclusively subject to our these General Terms and Conditions of Sale.
- 1.1.2. We do not recognize conflicting or deviating general terms and conditions of our customers unless we expressly agree to their applicability in writing. Our General Terms and Conditions of Sale shall also apply if we carry out the delivery to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from our General Terms and Conditions of Sale.
- 1.1.3. The conditions stated in our offers and/or order confirmations shall prevail.
- 1.1.4. These General Terms and Conditions of Sale shall not apply to consumers within the meaning of § 13 BGB (German Civil Code).

##### **1.2. Offer and conclusion of contract**

- 1.2.1. Our offers are subject to change, in particular with regard to information on quantities, packaging, prices and delivery times. Orders of the customer shall only become binding for us through our written order confirmation or through delivery.
- 1.2.2. If clauses of the Incoterms are mentioned in the offer, the Incoterms 2020 shall apply. Unless otherwise agreed, "ex works (EXW) Ritschenhausen, Incoterms (2020)" shall apply in our offers.

##### **1.3. Prices, terms of payment, set-off and default**

- 1.3.1. Unless otherwise agreed in writing, our prices are "ex works (EXW) Ritschenhausen, Incoterms (2020)" plus freight, insurance and, if desired, the costs for analyses.
- 1.3.2. Our prices are exclusive of the statutory value added tax.
- 1.3.3. Payments shall be made as agreed, otherwise at the latest 14 days after date of invoice net cash. Discounts may be deducted if they have been agreed in writing.



- 1.3.4. From the 15th day after the invoice date, the customer is in default without further reminder. Default interest of 9% above the base interest rate shall accrue. In addition, we are entitled to claim the lump-sum default interest of € 40 in accordance with § 288 para. 5 BGB (German Civil Code). If a higher damage caused by default occurs, we are entitled to claim this.
- 1.3.5. We are free to invoice our services by letter post or electronically by e-mail.
- 1.3.6. The customer may only offset his own claims against our claims and assert rights of retention if the claims or the rights of retention of the customer have either been legally established, acknowledged by us or the counterclaim is related to the invoiced goods. The customer is free to assert excluded claims in court.
- 1.3.7. If the customer is in default or if his financial circumstances deteriorate significantly, we may declare all outstanding claims immediately due and payable and demand securities for them.
- 1.3.8. Furthermore, we are entitled to carry out outstanding deliveries only against advance payment or provision of security if, after conclusion of the contract, we become aware of circumstances which are likely to substantially reduce the creditworthiness of the customer and thereby jeopardise the payment of our outstanding claims against the customer.

#### **1.4. Liability**

- 1.4.1. We shall be liable for simple negligence in the event of injury to life, body or health as well as for obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the customer may regularly rely (essential contractual obligations).
- 1.4.2. Otherwise, we are only liable for intent and gross negligence.
- 1.4.3. In case of slightly negligent violation of essential contractual obligations, we shall only be liable for foreseeable damages typical for the contract and not for remote consequential damages.
- 1.4.4. Liability for culpable injury to life, body or health shall remain unaffected; this shall also apply to mandatory liability under the Product Liability Act.
- 1.4.5. All further claims of the customer are excluded.

#### **1.5. Force majeure**

- 1.5.1. If we are prevented from providing the performance due to events of force majeure, i.e. impediments to performance through no fault of our own of more than 14 calendar days' duration, we shall inform the customer in writing in good time. In this case, we shall be entitled to postpone performance for the duration of the impairment or to withdraw from the contract in whole or in part on account of the part not yet performed, insofar as we have complied with the aforementioned duty to inform and have not assumed the performance risk. Force majeure shall be



deemed to include pandemics, epidemics, natural disasters, strikes, lockouts, administrative interventions, shortages of energy and raw materials, transport bottlenecks through no fault of our own, operational hindrances through no fault of our own, e.g. due to fire, water and machine damage, and all other hindrances which, viewed objectively, have not been culpably caused by us.

1.5.2. If a delivery or performance date or a delivery or performance period has been bindingly agreed and if, due to events pursuant to the above Section 1.5.1, the agreed delivery or performance date or the agreed delivery or performance period is exceeded by more than four weeks or if, in the case of non-binding performance dates, it is objectively unreasonable for us to adhere to the contract, we shall be entitled to withdraw from the contract with respect to the part not yet performed. In this case, we shall not be entitled to any further rights, in particular claims for damages.

1.5.3. In the event that we are unable to perform our services on time due to a direct or indirect effect of the so-called COVID-19 pandemic and it is no longer possible to perform the contract in accordance with the contract, we shall be entitled either to withdraw from the contract or to postpone the performance date without assuming any liability. For the avoidance of doubt, the Buyer shall not be entitled to terminate the Contract due to any delay caused directly or indirectly by the so-called COVID-19 pandemic.

## **1.6. Form, choice of law, place of jurisdiction and partial invalidity**

1.6.1. Unless otherwise expressly stipulated in these General Terms and Conditions of Sale, our offers or order confirmations, all declarations within the scope of the business relationship with the customer 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 Sale, our offers or our order confirmations.

1.6.2. Place of performance and jurisdiction is Ritschenhausen. However, we are entitled to sue the customer at his place of business.

1.6.3. The law of the Federal Republic of Germany shall apply exclusively, excluding the provisions of international private law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

1.6.4. The invalidity of individual provisions of these General Terms and Conditions of Sale shall not affect the validity of the remaining provisions.

## **2. Special provisions for goods and products manufactured or traded by us**

### **2.1. Deliveries, risk of transport and reservation of harvest**

2.1.1. Unless we have expressly confirmed them in writing as being fixed, delivery periods are only approximate and do not represent fixed dates.



- 2.1.2. In the event of a delay in delivery, the customer shall grant us a reasonable grace period of at least two weeks.
- 2.1.3. In the absence of any agreement to the contrary, we are entitled to make partial deliveries to the extent customary in the trade, which shall be at least 25% of the quantity ordered.
- 2.1.4. In the case of contracts which include several deliveries over a contractually agreed period of time, in particular in the case of deliveries on call, each partial delivery shall be deemed to be a completed transaction. A defective or untimely partial delivery shall not affect the part of the contract not yet executed.
- 2.1.5. We are entitled to deviate from the total agreed delivery quantity by up to +/- 10 % with a corresponding adjustment of the purchase price.
- 2.1.6. All offers and contracts are subject to correct, complete and timely delivery to us.
- 2.1.7. All our sales are also subject to the reservation of harvest. If, as a result of a poor harvest, fewer products are available in terms of quantity than could be expected when the contract was concluded, we have the right to deliver correspondingly fewer products. This applies in particular if the products we purchase under cultivation contracts are not sufficient to fulfil the contracts of all our customers. By delivering a quantity that is smaller for this reason, we fulfil our delivery obligations in full. In such a case we are not obliged to deliver replacement products and are not liable for damages of any kind. This provision shall also apply mutatis mutandis in the event that fewer products are available as a result of a ban on placing the products on the market by the authorities authorised to do so.
- 2.1.8. Unless expressly agreed otherwise in writing, we shall ship the goods at the customer's expense and risk.
- 2.1.9. All deliveries are made including the necessary and required packaging. Disposal shall either be taken over by the customer or the costs for this shall be added to the respective sales prices in the corresponding amount.

## **2.2. Retention of title**

- 2.2.1. The goods delivered by us remain our property until the purchase price has been paid in full.
- 2.2.2. If the customer has paid the purchase price for the delivered goods, but other liabilities from the business relationship with us have not yet been paid in full by the customer, we also retain title to the delivered goods until all liabilities have been paid in full. This also applies if our individual claims are placed in a current account.
- 2.2.3. If the customer processes the goods delivered by us, we shall be deemed to be the manufacturer and shall acquire direct ownership of the newly created goods. If the processing is carried out together with other materials, we acquire direct co-ownership of the new goods in the ratio of the invoice value of the goods delivered by us to that of the other materials.



- 2.2.4. If the goods delivered by us are combined or mixed with an item of the customer in such a way that the customer's item is to be regarded as the main item, it is deemed agreed that the customer transfers co-ownership of the main item to us in the ratio of the invoice value of the goods delivered by us to the invoice value (or in the absence of such invoice value to the market value) of the main item.
- 2.2.5. At the same time, it is agreed that the customer shall, at his own expense, safely, properly and carefully store and insure for us our reserved and collateral property as well as the sole ownership or co-ownership created in accordance with Sections 2.2.3 and 0, in each case with suitable identification.
- 2.2.6. The customer shall be entitled to resell the goods to which we have (co-) title in the ordinary course of business as long as he meets his obligations arising from the business relationship with us in due time. All claims arising from the sale of goods to which we have retained title shall be assigned to us by the customer at the time of the conclusion of the contract with us; insofar as we have acquired co-ownership in the event of processing, combining or mixing, the assignment shall be in the ratio of the value of the goods delivered by us under retention of title to the value of the goods sold by the customer.
- 2.2.7. The customer is not permitted to pledge the goods or assign them as security to third parties. In the event of pledges or other interventions by third parties in our reserved property, the customer must inform us immediately so that we can protect our rights. If the third party is not able to reimburse us for the judicial or extrajudicial costs of legal action, the customer shall be liable for the loss incurred by us.
- 2.2.8. At our request, the customer shall provide all necessary information on the stock of goods in our ownership and on the claims assigned to us. Similarly, the customer shall, at our request, identify the goods in our ownership/co-ownership as such and inform his customers of the assignment.
- 2.2.9. If the customer is in default of payment, the customer is no longer entitled to resell or process the goods subject to our reservation of title. He must return them to us immediately, provide all information about securities and hand over the relevant documents. The costs for the protection of our rights shall be borne by the customer. The revocation of the authority to sell or process the goods does not in itself constitute a withdrawal from the contract. Our right to withdraw from the contract and to claim damages for non-performance remains unaffected.
- 2.2.10. If the value of the securities to which we are entitled exceeds the claims to be secured by a total of more than 20%, we are obliged to release securities to be selected by us in a corresponding amount in favour of the customer upon written request by the customer.
- 2.2.11. If the retention of title under the provisions of this Section 2.2 is not effective under the law of the country in whose territory our products are located, the next most effective legal security corresponding to the retention of title in that country shall



be deemed agreed. If necessary, the customer will take all measures necessary to approve and maintain such a right.

**2.3. Default of call off and acceptance**

If the customer does not call off the ordered goods from us within the agreed or otherwise reasonable period, we can set him a grace period and, if the grace period expires without result, we can withdraw from the contract and claim damages for non-performance.

**2.4. Quality, obligation to inspect and notification of defect, claims for defects**

- 2.4.1. The intended quality of the goods shall be governed by the contractual agreements. However, unless expressly agreed otherwise in writing, these do not constitute any representations of characteristics or a guarantee.
- 2.4.2. In the case of sales based on samples, the sample shall only be regarded as an illustrative item to show the characteristics and nature of the goods. Unless otherwise expressly agreed in writing, the characteristics of the sample are neither warranted nor guaranteed.
- 2.4.3. In the case of sales based on approved analyses, the quality of the sample shall be deemed to be agreed if the customer does not give written notice of non-conformity with the specifications of the sample sent within four weeks from the date of receipt of the sample by the customer and we inform the customer in writing of the intended meaning of his silence at the beginning of the period. The costs associated with the examination shall in any case be borne by the customer.
- 2.4.4. Goods designated as "Merchandise" are merely trades by us and have not been processed or manufactured by us. A product sold as Merchandise is delivered by us as we purchase it from the origin, we assume exclusively a trader function. The quality parameters of these goods may differ from those of our own sales goods, without the goods being therefore defective.
- 2.4.5. In the case of natural products, biologically justified variations in form, colour and structure as well as in terms of active ingredient content do not constitute a defect, unless certain parameters agreed upon in individual contracts are not met or the quality deviation exceeds the usual extent.
- 2.4.6. A claim for delivery from a specific crop shall only exist if this has been expressly agreed in writing.
- 2.4.7. The customer shall notify us immediately in writing (at the latest within four working days after receipt) of any apparent defects in the delivered goods. If a defect does not become apparent until later despite a proper inspection of incoming goods by the customer, the period of four working days from the time customer becomes aware of the defect shall apply.
- 2.4.8. In the event of timely and justified complaints, the customer's claims for defects shall initially be limited to replacement delivery or remedy of the defect, at our discretion. If cure fails, we shall be entitled to make another attempt to effect a cure.





2.4.9. If we fail to cure, the customer may reduce the purchase price or, at his discretion, withdraw from the purchase contract. Claims for damages according to Section 1.4 remain unaffected.

2.4.10. If the defect is based on the delivery of a third party to us, the customer can only demand that our claims against the third party be assigned to him. Only if the prior claim against the third party by our customer fails, the customer may assert a claim against us.

2.4.11. Warranty claims against us cannot be assigned.

## **2.5. Limitation period**

2.5.1. The period of limitation for claims regarding defects is one year after receipt of the goods/services by the customer, unless mandatory statutory provisions provide for a longer period of limitation.

2.5.2. The period of limitation in the case of supplier recourse in accordance with §§ 445a, 445b, 478 BGB (German Civil Code) remains unaffected; it is five years calculated from delivery of the defective item to our customer.

## **3. Special conditions for contract processing**

### **3.1. Delivery and return delivery, delivery time**

3.1.1. Unless expressly agreed otherwise in writing, the customer shall deliver the goods to be processed to us free of charge and take them back ex works after the end of processing.

3.1.2. Our delivery and completion deadlines are, unless we have expressly confirmed them in writing as fixed, only approximate and do not represent fixed dates.

3.1.3. All offers and contracts are subject to correct, complete and timely self-supply.

3.1.4. The delivery and completion period we have promised in accordance with Section 3.1.2 is subject to the prior, timely and contractual delivery of the goods to be processed, the clarification of all technical questions and the fulfilment of all other duties of cooperation on the part of the customer, e.g. the examination of a sample of our performance provided to him.

3.1.5. If the customer defaults on his obligations to cooperate, in particular pursuant to Section 3.1.4, the delivery and completion deadlines pursuant to Section 3.1.2 shall be postponed accordingly.

3.1.6. In the event of a delay in delivery, the customer shall grant us a reasonable grace period of at least two weeks.

3.1.7. We shall only be in default of delivery if the customer fulfils his obligations to cooperate, in particular in accordance with Section 3.1.4, in accordance with the contract.



- 3.1.8. In the case of contracts that include several deliveries over a contractually agreed period of time, in particular in the case of deliveries on call, each partial delivery shall be deemed to be a completed transaction. A defective or untimely partial delivery shall not affect the part of the contract not yet executed.

### **3.2. Scope of contract processing**

- 3.2.1. The object of contract processing is the processing or treatment (e.g. sterilisation, stock protection treatment, drying, cutting, grinding, cleaning, mixing) of goods which the customer makes available to us for the purpose of contract processing at his own expense at the location specified by us.
- 3.2.2. The processing or treatment of the goods shall be based on the current state of the art. Nevertheless, structural changes (e.g. changes in colour, weight and humidity), especially during disinfection or drying, are possible and unavoidable.
- 3.2.3. A prior quality inspection of the goods delivered by the customer shall only take place on the basis of a corresponding written agreement with the customer.
- 3.2.4. An analysis of the goods processed by us will be provided by us at the customer's request and at his expense.
- 3.2.5. If, in the course of the execution of an order for contract processing, it turns out that the processing will be more expensive than initially assumed due to product-specific factors not identifiable at the time of the conclusion of the contract and if we notify the customer of this in writing, both contracting parties may withdraw from the contract in writing if they cannot reach agreement on the additional price.

### **3.3. Quality of the delivered goods**

By way of an independent guarantee promise, the customer guarantees that due to the nature and identification of the goods handed over to us, proper and safe handling is ensured, in particular that the goods can be stored and processed without risk to people or property and that they may be put into circulation in accordance with the applicable legal provisions.

### **3.4. Packaging**

If the customer does not collect the packaging used for the delivery of the goods himself or if this packaging can be reused for the processed goods, we will dispose of the delivery packaging at the customer's expense.

### **3.5. Food law labeling**

The customer shall specify to us the legal labelling requirements for the packaging and labels of the product. The customer shall be responsible for the conformity of the labeling with the legal provisions and regulations in the respective sales market, insofar as these have been specified to us by the customer or the product is delivered in neutral packaging without special labeling as agreed. **Storage and collection**





### **3.6. Storage and Collection**

- 3.6.1. The goods made available by the customer will only be stored by us for the duration of the contract processing.
- 3.6.2. The customer is obliged to collect the processed goods within one week of the completion of the contract processing as notified by us in writing; otherwise he will be in default of acceptance.
- 3.6.3. The risk of accidental loss or accidental deterioration of the goods shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's delay.
- 3.6.4. If the customer does not collect the goods within one week after notification of completion of the contract processing, we will store the goods at normal market conditions at the customer's expense.
- 3.6.5. Since only the customer as owner knows the value of the goods, the customer's goods are stored with us uninsured for the entire period. The customer is solely responsible for taking out insurance.
- 3.6.6. If we are commissioned by the customer to return the goods, the customer is also responsible for the proper insurance of this transport.

### **3.7. Acceptance**

- 3.7.1. The customer undertakes to accept the returned goods in writing without delay, at the latest, however, within one week of the return delivery.
- 3.7.2. If the customer does not declare acceptance within the period pursuant to Section 3.7.1, we may set the customer a reasonable deadline in writing to make such declaration. If the reasons for refusing acceptance are not declared in writing within this period, acceptance shall be deemed to have taken place.

### **3.8. Security interests and acquisition of co-ownership**

- 3.8.1. We are entitled to the entrepreneurial lien in the sense of § 647 BGB (German Civil Code).
- 3.8.2. As security, the customer shall transfer to us co-ownership of the processed goods in the ratio of the value of the contract processing to the value of the goods as we return them to the customer until the remuneration for the contract processing has been paid in full.
- 3.8.3. If the customer has paid the remuneration for the contract processing, but further liabilities from the business relationship with us have not yet been paid in full by the customer, we also reserve the right to co-ownership of the returned, processed goods until all liabilities have been paid in full. This also applies if our individual claims are placed in a current account.



- 3.8.4. In the event that the customer processes the returned, refined goods supplied by us, we shall be deemed the manufacturer and shall acquire direct co-ownership of the newly created goods in the ratio of the invoice value of the contract processing to that of the other materials.
- 3.8.5. Insofar as the refined goods returned by us are combined or mixed with a customer's item in such a way that the customer's item is to be regarded as the main item, it shall be deemed agreed that the customer shall transfer co-ownership of the main item to us in the ratio of the invoice value of the contract processing services provided by us to the invoice value (or in the absence of such invoice value to the market value) of the main item.
- 3.8.6. At the same time, it is agreed that the customer shall keep and insure our joint property as security as well as the co-ownership created in accordance with Sections 3.8.2 to 3.8.5 safe, properly and carefully for us at his own expense and with suitable identification.
- 3.8.7. The customer shall be entitled to resell the goods in which we have co-ownership in the ordinary course of business as long as he meets his obligations arising from the business relationship with us in due time. All claims arising from the sale of goods in which the customer grants us co-ownership shall be assigned to us by the customer at the time of the conclusion of the contract with us in the amount of the value of the contract processing performed by us.
- 3.8.8. The customer is not permitted to pledge the goods or assign them as security to third parties. In the event of pledges or other interventions by third parties in our co-ownership, the customer must inform us immediately so that we can protect our rights. If the third party is not able to reimburse us for the judicial or extrajudicial costs of legal action, the customer shall be liable for the loss incurred by us.
- 3.8.9. At our request, the customer shall provide us with all necessary information on the stock of goods in our co-ownership and on the claims assigned to us. Similarly, the customer shall, at our request, identify the goods in our ownership/co-ownership as such and inform his customers of the assignment.
- 3.8.10. If the customer is in default of payment, the customer is no longer entitled to resell or process the goods in our co-ownership.
- 3.8.11. If the value of the securities to which we are entitled exceeds the claims to be secured by a total of more than 20%, we are obliged to release securities to be selected by us in the corresponding amount in favour of the customer upon written request by the customer.
- 3.9. Quality, obligation to inspect and notification of defect, claims for defects**
- 3.9.1. The intended quality of the processed goods be governed on the contractual agreements. However, these do not represent any representations of characteristics or a guarantee, unless expressly stated otherwise in writing.



- 3.9.2. We shall not be liable for defects in the quality of the processed product if these are based on product characteristics which are beyond our control, such as microbiological initial load, natural or growth-related product characteristics, plant protection or heavy metal residues and other foreign contamination.
- 3.9.3. We shall only visually inspect the goods delivered to us prior to contract processing. A more extensive inspection will only be carried out if this has been agreed in writing.
- 3.9.4. The processing losses that inevitably occur during contract processing depend heavily on the quality of the goods used. In this respect, information on expected processing losses, which are made before contract processing, are always non-binding estimates. We document the processing losses and calculate exact incoming and outgoing weights.
- 3.9.5. Insofar as the customer has provided us with a sample of the desired finished product quality when placing the order or has given us specific information in writing regarding cut sizes, screen sizes, drying losses, etc., these are to be understood as targets which cannot be achieved with certainty due to the uneven nature of natural products.
- 3.9.6. In particular, we do not give any guarantee that the quality will be achieved in accordance with the sample according to Section 3.9.5.
- 3.9.7. The customer shall notify us immediately in writing (at the latest within four working days after receipt) of any apparent defects in the returned goods. If the customer fails to do so, the goods shall be deemed to have been approved, provided that we inform the customer in writing at the beginning of the period of time about the intended meaning of his silence. If a defect is only detected later despite a proper inspection of incoming goods by the customer, the period of four working days shall apply from the time customer becomes aware of the defect.
- 3.9.8. The customer's claims for defects are initially limited, at our discretion, to replacement delivery or remedy of the defect. If cure fails, we are entitled to rectify the defect once again.
- 3.9.9. If cure by us fails, the customer may reduce the wage for contract processing, remedy the defect himself or, at his discretion, withdraw from the contract processing agreement. Claims for damages according to Section 1.4 remain unaffected.
- 3.9.10. Warranty claims against us cannot be assigned.

### **3.10. Statute of limitations**

The period of limitation for warranty claims is one year after acceptance by the customer, unless mandatory legal regulations provide for a longer period of limitation.