

## **W. Kündig & Cie AG, Zurich**

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

Status 07 November 2022

#### **1. Area of application**

These General Terms and Conditions of Purchase and Delivery (GTCP) shall apply to all purchases made by W. Kündig & Cie AG, Stampfenbachstrasse 38, 8006 Zurich, Switzerland, registered in the Commercial Register of the Canton of Zurich under number CHE-102.206.323 (hereinafter referred to as "Kündig", "we", "us", etc.) from the Seller.

Any other terms and conditions of contract deviating from the GTCP, namely also those which the Seller declares to be applicable together with the conclusion of the contract, shall only be valid if and to the extent that they have been expressly accepted by us in writing.

The GTCP in the valid version at the time of the conclusion of the contract shall apply. We reserve the right to amend these GTCP at any time.

By concluding the contract, the seller confirms that he has read and agrees with the GTCP and all parts of the contract.

#### **2. No subscription obligation**

The GTCP do not establish any purchase obligation for us and no delivery obligation for the Seller. The GTCP supplement the purchase or delivery agreement or written order (contract) to be concluded between the parties, in which the essential provisions (delivery date, delivery quantity, price, quality requirements, etc.) for the respective goods are recorded.

#### **3. Ranking**

The following order of priority applies to this purchase:

- The specifications and conditions set out in the contract.
- The form contracts and conditions of purchase specified in the contract.
- This GTCP.

#### **4. Inclusion of Kündig guidelines and industry practices**

In addition to these GTCP, the Seller shall also comply with the specific Kündig guidelines attached to the contract or to these GTCP. The Kündig Guidelines form an integral part of these GTCP. We may change the Termination Guidelines at any time. Changes will be communicated to the Seller by e-mail. The Seller will have ten (10) business days from the date of such notice to review the amended Termination Policy(ies) and to make any reservations about the amended Termination Policy(ies) to the person responsible for the Seller at our office. The reservations must be sent by registered letter to the person in charge. If no feedback with reservations is received within the aforementioned period, the amended Kündig guidelines shall be deemed to have been accepted without reservation and shall thereby become immediately applicable.

The parties also recognise the current version of the practices of the Swiss Grain Exchange Lucerne, unless otherwise agreed in these GTCP or the additional contractual documents. In the event of conflicts between the practices of the Swiss Grain Exchange Lucerne and these GTCP including all associated contractual components, the GTCP including all associated contractual components shall take precedence over the practices of the Swiss Grain Exchange Lucerne.

Insofar as Incoterm terms are used, the current version of the Incoterms at the time of the conclusion of the contract is always meant.

## **5. Object of purchase and scope of services**

The object of purchase and the scope of performance to be rendered by the Seller shall be bindingly stipulated in the contract.

## **6. Prices**

Unless otherwise agreed, prices are net ex works or ex warehouse. Price increases after conclusion of the contract due to increases in or the introduction of new public charges, fees of any kind or other circumstances which have an effect on the transport, raw material or production costs or on the overall calculation are excluded, insofar as we are not responsible for these ourselves. Unilaterally enforced price changes are invalid in any case.

The seller is responsible for the export licenses and all papers and documents necessary for the export. The costs of obtaining export licences and other papers and documents necessary for export shall be borne by the seller.

## **7. Terms of payment**

Payment of the agreed price shall be made on the terms set out in the contract.

Invoicing and payment transactions are carried out according to our specifications. The seller undertakes to provide us with the requested specific data for statistical purposes. The terms of payment, in particular payment targets and discounts, shall be specifically agreed in the contract.

We are entitled to offset, deduct or withhold the agreed purchase price, in particular if counterclaims are undisputed or have been legally established.

## **8. Delivery and packing**

The place of performance and delivery shall be the place of delivery specified in the contract, unless a different place of performance and delivery is agreed in individual cases or for partial deliveries.

Delivery is due on the delivery date specified in the contract. The delivery date shall be deemed to be the contractual fixed date. If the Seller does not comply with the agreed delivery date, he shall be in default without further ado as of the stated delivery date.

The seller is obliged to strictly adhere to the delivery quantity in the quality specified in the contract. Excess or short deliveries or deliveries deviating in quality are not permitted.

Initial deliveries or sample consignments must be specifically marked by the seller. Unless expressly

agreed otherwise, sample shipments are non-binding and free of charge for us.

The deliveries as well as each delivery unit must be clearly and recognisably labelled (e.g. in a pallet card or a label) in accordance with the legal requirements as well as the specifications in the contract.

The goods shall be properly packed by the seller in compliance with relevant regulations and safely with regard to the specific transport. If their removal requires special care, the Seller shall explicitly draw our attention to this. The Seller shall ensure compliance with all laws, regulations and official requirements in the handling of packaging materials and their disposal.

In the event of a breach of this clause, we shall be entitled, at our own discretion, to reject deliveries of goods and to return them at the expense and risk of the seller. In such a case, we shall be entitled to make covering purchases even without setting a grace period and to charge the seller for the damage incurred and arising. All costs and damages incurred by the Buyer as a result of a breach of this clause, in particular any penalties incurred by us as a result of not supplying our customers on time, shall be borne by the Seller. Further legal or contractual claims remain reserved.

## **9. Documents**

The Seller undertakes to provide us free of charge and in reproducible form with all documents necessary for the delivery and required by law, in particular documents required for export, import, customs clearance, taxation, use, processing and resale as well as transport documents, certificates/attests and test reports.

At our first request, the seller shall immediately provide us with all information and documents that we require to conclude or amend transport insurance policies.

## **10. Loading equipment**

The Seller shall deliver the Goods only by using standardized loading equipment permitted by law in the country of dispatch, any transit country and the country of destination.

The loading aids must be in a clean and defect-free condition when loaded, whereby the increased requirements in the food industry must be observed during the manufacture, cleaning, storage and loading of the loading aids.

## **11. Traceability of the goods**

The Seller undertakes to take appropriate measures to ensure that goods and components used therein are traceable at least to the respective upstream supplier.

Upon request, the Seller shall provide the relevant evidence and disclose the upstream suppliers.

## **12. Specifications and declarations of conformity**

The Seller unconditionally guarantees the properties specified in the contract with regard to the quality and quantity of the goods.

The specifications, certificates and declarations of conformity transmitted by the Seller to the Buyer constitute in their entirety warranted characteristics of the goods by the Seller. We are not obliged to check

the processability and marketability of the goods. If we order the corresponding goods on the basis of a sample consignment, the properties of the sample consignment, including in particular sensory and taste properties, shall be deemed to be warranted for future orders of the same goods.

The Seller undertakes to provide us with current and valid specifications and declarations of conformity in the form specified in the contract, if applicable, no later than ten (10) working days before the respective order. In the event that the specifications and/or declarations of conformity are limited in time, the Seller shall provide us with the respective renewed version without delay, provided that further deliveries are imminent.

The Seller warrants that the goods delivered fully comply with the contractually agreed requirements and conform to all legal regulations applicable in Switzerland, in particular the product-specific requirements as well as the requirements under labelling and advertising law.

### **13. Sustainability**

Sustainability is a high priority for Kündig and we expect an active contribution from all suppliers and partners.

#### **Working conditions and human rights**

The Seller shall ensure through appropriate measures that the country-specific legal provisions as well as the relevant conventions and guidelines of the United Nations (UN), the OECD and the International Labour Organization (ILO) are complied with. In addition, the seller guarantees that their free, prior and informed consent (FPIC) will be obtained prior to any activity that may affect the rights, land, resources, livelihoods and food security of indigenous peoples and local communities. The Seller also undertakes to protect the rights of environmental and human rights defenders, whistleblowers, complainants, and community spokespersons and to protect their anonymity. This includes the seller's own companies as well as all third-party facilities and outsourced parts of production where goods are produced for us, including upstream stages.

In particular, applicable regulations and industry standards on working hours, freedom of association, right to collective bargaining, prohibition of discrimination, prohibition of child labour, prohibition of forced labour and disciplinary measures, statutory minimum wages and health and safety at work must be complied with.

We require from our business partners a commitment to Living Income and Living Wage, respectively to identify and - whenever possible - close the income gaps.

In the case of production in risk countries, the amfori Code of Conduct of the Business Social Compliance Initiative (BSCI) or another recognised social standard (Fairtrade Max Havelaar (FLO), SA8000, ETI / Sedex / SMETA, IMO Fair for Life, IMO For Life, Rainforest Alliance) must be implemented by the seller and proven upon request.

#### **Production**

The seller ensures through appropriate measures that in his company and in his operating sites as well as in the upstream stages a careful use of finite and natural resources takes place and that the planetary impact limits are respected in the process. The business partner commits to comply with the basic principles of the Accountability Framework Initiative (AFi) regarding No Deforestation and No Conversion and to refrain from deforestation and the conversion of other natural ecosystems throughout the supply chain. Other natural ecosystems include, but are not limited to, savannahs, grasslands, peatlands and wetlands (reporting date 31 December 2015).

#### **Processes/products prohibited or subject to approval**

Prior to the use of genetically modified organisms or the irradiation of the goods, the Seller shall provide our consent by submitting the complete official permits, proof of harmlessness as well as a written explanation of the additional benefits of the intended procedure.

Prohibited are active substances suspected of being acutely hazardous to bees, i.e. in particular: Chlorpyrifos, clothianidin, cypermethrin, deltamethrin, imidacloprid, thiametoxam, fipronil.

#### **14. Defective services and warranties**

Services or goods shall be deemed defective in particular if one or more deviations from the agreed requirements, applicable Kündig guidelines and/or statutory requirements are identified.

Unless otherwise agreed, we shall have thirty (30) days from delivery of the goods at the agreed place of delivery to inspect the goods and claim any defects. If we discover a defect when inspecting the goods, the Seller undertakes to bear the costs of the inspection.

If the goods deviate from the agreed quality, we have the right, at our own discretion, to refuse acceptance, to demand rectification, to return the goods or to initiate a withdrawal or recall of individual goods or stocks of goods. The resulting costs shall be borne by the seller.

If we so request, the seller must replace returned goods with faultless goods within the set period of grace. If the seller fails to comply with the grace period, we shall be entitled to make a covering purchase. The resulting costs shall be borne by the seller.

If defects in the goods have been identified, the parties may, irrespective of the measures determined by us in accordance with this clause, jointly agree on further measures. In this case, the seller undertakes to cooperate with us in a reasonable and constructive manner. If the seller is responsible for the further measures, he shall bear the costs thereof.

If the parties cannot agree on further corrective measures or if the measures chosen by us are not implemented within the agreed period, we may, at our discretion, either reject the goods, cancel orders or parts thereof, suspend future orders or withdraw from the contract.

#### **15. Assurances**

The Seller warrants that the Goods fully comply with the applicable statutory requirements and the agreed Kündig guidelines, specifications and instructions.

The Seller shall take appropriate measures to ensure and warrant that the country-specific legal regulations and minimum standards, the relevant conventions of the United Nations, the industry standards and the legally prescribed working conditions are complied with in his company, the operating sites, productions and the like as well as at his sub-suppliers in or from which he has goods produced or procures goods for us.

The Seller warrants that the applicable national and regional laws in the countries of production as well as in Switzerland for the protection of the environment, biodiversity and animals as well as the legal use of land and water are complied with. Furthermore, the Seller warrants that the goods have been produced without genetically modified organisms, genetic engineering processes or other irradiation and that no problematic substances, in particular chemical substances, so-called substances of very high concern or substances of very high concern according to the applicable specifications and lists have been used in connection with the goods.

The Seller warrants that no contractual rights, intellectual property rights (in particular trademark rights, patent rights, design rights and/or copyrights) and/or other rights of third parties are infringed by the delivery and subsequent sale of the delivered goods. The Seller shall indemnify us against all claims

asserted by third parties and shall fully indemnify us against the claims.

## **16. Liability**

The seller shall be liable without limitation for all damages, including those caused by his auxiliary persons or substitutes.

The seller shall pay us an appropriate handling fee for all expenses incurred by us for which the seller is responsible. The compensation for handling shall be stipulated in the contract. Irrespective of the payment of the handling fee, we shall be entitled to assert claims for damages in excess thereof. Payment of the compensation for handling shall not release the seller from the performance of the agreed service.

## **17. Insurance**

The Seller undertakes to take out liability insurance in a sufficient amount (depending on the value of the deliveries) and to submit the insurance confirmation to us upon first request.

## **18. Audits**

We are entitled to carry out an audit at the Seller's premises and/or those of its suppliers or to have it carried out by a third party who has been bound to confidentiality. The Seller undertakes to facilitate the audits and to support us or the third parties involved in the performance of the audit.

An audit shall be announced in advance within a reasonable period of time to the Seller and/or its sub-suppliers. The Seller undertakes to ensure that our customers have the same audit rights vis-à-vis the Seller and the sub-suppliers.

Notwithstanding the foregoing, we shall be entitled to carry out unannounced audits or have such audits carried out by third parties if we suspect quality deviations that pose a risk to health.

We bear the costs of the respective audit. However, if violations of the legal requirements, the Kündigung guidelines, the contract or these GTCP are identified in the audit, the Seller shall bear the costs of the audit in full.

## **19. Secrecy**

The parties undertake to treat the content of this contract as well as all non-publicly accessible information exchanged in the context of the provision of services as confidential and not to disclose any such information to third parties without the express prior consent of the other party concerned. Statutory and regulatory disclosure obligations as well as disclosure for the enforcement of claims arising from or in connection with these GTCP are reserved.

This confidentiality obligation shall remain binding as long as the information concerned does not become public and the party concerned has a legitimate interest in keeping it confidential.

## **20. Force majeure**

If either party is unable to perform its obligations under this contract because of an impediment beyond its control which could not have been foreseen or prevented at the time of the conclusion of the contract, such as strikes, war, fire, floods, embargoes, pandemics, epidemics, earthquakes or similar events, it shall not be deemed to have breached the contract.

If the party concerned considers that such an impediment affecting the performance of the contract has occurred, it shall notify the other party as soon as possible, informing it of the details of such impediment, in particular its duration and impact on the performance of the contractual obligations, to the extent possible.

If such an obstacle affecting the fulfilment of the contract lasts longer than three months, we may withdraw from the contract without setting a deadline.

## **21. Assignment**

The seller is not entitled to transfer individual rights or obligations from the contract to a third party without our prior written consent. We are entitled to transfer individual rights or obligations under the contract to a third party without the seller's consent.

## **22. Final provisions**

Changes, additions or cancellations of provisions of these terms and conditions must be made in writing and agreed to by both parties in order to be valid. An amendment to this obligation shall in turn require a written agreement in order to be valid.

Should one or more provisions of these terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions.

Swiss law shall apply exclusively. The application of the conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods is excluded.

Unless otherwise agreed, our contracts shall be subject to arbitration by the Swiss Grain Exchange Lucerne, place of jurisdiction Lucerne.