

# General Terms and Conditions of Business (Purchases)

## § 1 General

(1) The following general terms and conditions for the purchase of products shall apply to all contractual relations with the suppliers. All agreements which stipulate a change, a supplement or a specification of these contractual conditions must be set down in writing or in textual form. Any declarations made by a representative or supporting staff of LACTERRA shall only be binding if LACTERRA supplies consent thereto in writing or in textual form.

(2) If the supplier should have his own terms and conditions of business, this contract shall be concluded without an express agreement on the incorporation of terms and conditions of business of both parties. If the terms and conditions of business of the Partner should coincide with the terms and conditions set down in this agreement, then these clauses shall be deemed valid. Non-mandatory provisions of law will supersede contradictory clauses in the terms and conditions of business of the parties. Non-mandatory provisions of law will also supersede the terms and conditions of business of both parties if no clause in the terms and conditions of business of LACTERRA coincides with those of the Partner. Should these terms and conditions of business of LACTERRA contain stipulations, which the terms and conditions of business of the Partner do not regulate, the terms and conditions of LACTERRA shall be valid.

## § 2 Offers / Orders

(1) Declarations in textual form or in writing must be made in such a manner that the receipt thereof is ensured. Furthermore, offers and confirmation of orders shall only be valid in writing or in textual form. Supplementary agreements and amendments must be confirmed by an officially authorized person in writing or in textual form.

(2) Annexes, deviations or modifications of LACTERRA's orders shall only be valid if these have been expressly confirmed by LACTERRA.

(3) Should an order of LACTERRA not be accepted within 10 workdays, LACTERRA has the right to revoke the offer. The date of the receipt of the declaration of acceptance shall be decisive.

(4) If LACTERRA remits documents such as diagrams, pictures, etc. to the supplier, the rights of use to these materials is granted to the supplier only as far as required for the fulfillment of the agreement. Formulas and production instructions, which were developed specifically for LACTERRA, to which LACTERRA has the exclusive rights of use or which LACTERRA has expressly designated to be secret shall be given back to LACTERRA immediately and without special request upon completion of the order. The rights of use shall go back to LACTERRA; no other declaration is necessary for the return of the rights.

(5) The supplier is obligated to maintain strict secrecy to all pictures, diagrams, calculations and other documentation and information. They must only be made available to employees that so require it for the fulfillment of the agreement. Third parties must not have access thereto unless LACTERRA has given its assent. This non-disclosure agreement shall continue upon completion of the order.

The agreement shall terminate when and so far as the production knowledge contained in the delivered pictures, diagrams, calculations and other documents has become common knowledge.

(6) The supplier warrants that the goods to be delivered shall be in accordance to LACTERRA's order specification, the approved samples, and the current statutory rules and regulations (DIN standard, EC regulations, etc.). All regulations regarding the trade, processing and delivery of foodstuffs are to be observed, particularly the Lebensmittel- und Futtermittelgesetzbuch (= Food and Feed Code of the Federal Republic of Germany), Regulation 178/2002 EC, the Lebensmittelkennzeichnungs-VO (= Food Labeling Regulation of the Federal Republic of Germany), the Rückstands- und Höchstmengenverordnung (= Residue and Maximum Quantity Regulation) and other provisions regarding the correct labeling and declaration.

### **§ 3 Prices**

(1) The reservation of a price increase requires the express consent thereto by LACTERRA in writing.

(2) The prices listed in the order are fixed prices. The legal VAT must be declared separately in the invoice.

(3) The price includes the free delivery. Furthermore, packaging and other possible fees, which are incurred during transportation, such as tolls, are included in the price. LACTERRA is not obligated to return the packaging unless otherwise agreed upon.

(4) All invoices must bear the order number and article number. The invoice must also bear the bank details and VAT-Identification number. If this information is missing, LACTERRA shall not be obligated to process or settle the invoice.

(5) A cash discount in the amount of 3% can be taken if payment is made within 14 days or within 30 days upon receipt of the invoice and the goods.

(6) LACTERRA has the right to set off claims within the same business relationship with the same business. Claims towards LACTERRA arising out of the same business relationship can only be set off if the supplier has a legally binding or undisputed claim. The right of retention can only be asserted within the same contractual relationship and not within the business relationship.

(7) Invoices for partial deliveries shall only be recognized if the partial delivery was agreed upon.

## **§ 4 Subcontractors**

(1) A subcontractor shall not be engaged unless LACTERRA has given its consent thereto. If LACTERRA consents to a subcontractor, the legal relationship shall only be concluded between LACTERRA and the supplier and not between LACTERRA and the subcontractor.

## **§ 5 Term of Delivery**

- (1) The term of delivery designated in the order is binding.
- (2) The supplier shall immediately inform LACTERRA of any circumstances or pending circumstances, which could cause a delay in delivery.
- (3) If the delivery is delayed LACTERRA has the right to assert the statutory claims. In particular, LACTERRA has the right to demand compensation for failure of performance if the supplier is given an additional reasonable respite to no avail.
- (4) The term of delivery set by LACTERRA shall begin on the day of the order. If the term of delivery has been designated as estimated, probable, etc. period of time, then no more than 10 days can pass between the designated date and the actual delivery date.
- (5) In the event of a delayed delivery LACTERRA has the right to demand a contractual penalty in the amount of 0,5 % of the value of the goods to be delivered for each commenced week. The contractual penalty shall not exceed a total of 5 % of the value of the goods to be delivered. LACTERRA reserves the rights to claim compensation of the actual damages as well as the contractual penalty.
- (6) Force majeure, labor disputes, civil commotions and similar circumstances, which LACTERRA cannot be held responsible, that can disrupt the production or disrupt the delivery shall release LACTERRA from the obligation of acceptance or from its liability for damages for the duration and in the scope of their effect. LACTERRA is obligated to immediately inform the supplier of the cessation of the disruption as the case may be.

## **§ 6 Transfer of Risk – Delivery Modalities**

- (1) Unless otherwise agreed upon, the delivery shall be made free of charge to the place designated by LACTERRA at the risk of the supplier.
- (2) The supplier does not have the right to over or under deliver beyond the product-specific or agreed upon tolerances.
- (3) The delivered goods must be properly packaged. If the packaging and transportation instructions made by LACTERRA are not observed, LACTERRA has the right to refuse the acceptance of the goods. LACTERRA shall thereby not be in default of acceptance.
- (4) The deliveries are to be insured for transportation damages at the supplier's costs.

## **§ 7 Warranty Claims – Liability**

- (1) If a commercial transaction is being fulfilled, LACTERRA shall examine the goods for deficiencies within a reasonable period of time.
- (2) LACTERRA has the right to assert all statutory warranty claims. In addition, LACTERRA has the right to demand the elimination of the defects or a replacement delivery at its own choice. In this case, the supplier is obligated to cover all expenditures incurred through the elimination of the defects or the replacement delivery. LACTERRA's right to demand compensation for damages, particularly compensation claims for failure of performance, shall not be affected thereby.
- (3) The statute of limitations shall be applicable to claims arising out of the deficiency of the goods and the deficiency in title.
- (4) The statutory rights of recourse can only be limited or excluded in an individually stipulated agreement.
- (5) The statutory regulations shall apply in regards to the supplier's liability. It is therefore advisable that the supplier obtain liability insurance for a reasonable amount. The liability can only be limited in an individually stipulated agreement between the Parties.

## **§ 8 Rights of Recourse – Product Liability – Indemnity**

- (1) Should the supplier be responsible for damages to the product and/or consequential damages, he shall indemnify LACTERRA from damage claims by third parties upon first request, if the cause of the damages is within his dominion and organizational purview, and he is liable towards third parties. In the event that LACTERRA has resold the goods and LACTERRA's customer has asserted warranty claims, the statutory regulations shall apply.
- (2) In a liability case for damages as defined in subclause 1, the supplier is obligated to compensate expenditures in accordance with §§ 683, 670 BGB (Civil Code of the Federal Republic of Germany), which are accrued in the course of or in relation with a recall action that LACTERRA must carry out. If feasible and reasonable, LACTERRA shall inform the supplier of the extent and manner of the recall action to be carried out and give him an opportunity to state his position. Other statutory claims shall not be taken into account.

## **§ 9 Intellectual Property Rights**

- (1) The supplier warrants that no rights of third parties are infringed through his delivery. This applies particularly to intellectual property rights such as trademarks, etc.
- (2) If a claim is asserted by a third party against LACTERRA for the infringement of intellectual property rights or a deficiency in title, the supplier is obligated to indemnify LACTERRA from these claims upon first request. LACTERRA does not have the right to conclude any type of agreement or settlement with the third party without the supplier's consent.
- (3) The indemnification also encompasses the supplier's obligation to compensate LACTERRA for all expenditures necessarily incurred through or in relation to the claim of a third party against LACTERRA. Should a third party assert intellectual property rights towards LACTERRA, and thereby demand that LACTERRA ceases and desists from advertising and distributing the goods concerned, LACTERRA has the right to revoke the agreement if the supplier is not able to obtain a judicial solution within thirty work days and agrees to indemnify LACTERRA from all claims arising out of the advertisement and distribution of the goods. In this case, the supplier must repay the sales price within ten days and indemnify LACTERRA for the legal fees incurred by the retention of their legal representative.

## **§ 10 Reservation of Ownership – Processing**

- (1) LACTERRA reserves the owner's title to all materials provided to the supplier. The processing and alteration of these materials is undertaken by the supplier solely for LACTERRA. If the materials provided under conditional delivery are processed with other materials, which LACTERRA does not own, LACTERRA shall become joint owner of the new product proportionally to the value of the materials delivered by LACTERRA and the other processed materials at the time of the processing. However, the value shall not exceed 110 % of the outstanding claim.
- (2) If a good supplied by LACTERRA be mixed inseparably with goods that LACTERRA does not own, LACTERRA shall acquire ownership of the new product proportionally to the value of the goods delivered by LACTERRA and the other mixed goods at the time the goods were combined. If the goods are mixed in such a manner that the supplier's product must be regarded as the principal product, then it is agreed upon that the supplier shall grant LACTERRA ownership thereto proportionately. The supplier shall keep LACTERRA's sole or joint ownership in safe custody.

## **§ 11 Place of Jurisdiction – Place of Fulfillment**

- (1) If the Partner is a businessman as defined by the Commercial Code of the Federal Republic of Germany (Handelsgesetzbuch), the place of jurisdiction for all legal relations is LACTERRA's place of business. However, LACTERRA has the right to sue at the supplier's place of business. Unless otherwise specified in the order, the place of fulfillment is LACTERRA's place of business.

## **§ 12 Applicable Law**

(1) The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the Federal Republic of Germany. CISG (United Nations Convention on Contracts for the International Sale of Goods) shall not be applicable.

(2) The invalidity of any part or stipulation of this Agreement or a respective supplementary agreement shall not affect the validity of the remaining Agreement and supplementary agreements thereto. The invalid stipulation shall be replaced with a regulation, which comes as close as possible to the economic intent thereof.

(3) In the case of uncertainties with regard to the translation, the interpretation of this Agreement and the Annexes or in any other case of doubt, the German text of the respective agreement shall prevail.

## **§ 13 Ethics**

(1) The supplier must be in full compliance with the standards of the ILO (International Labour Organisation).