

# General Terms and Conditions of Purchase

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Storck Group



## 1. Scope of application; defence clause

- a) These General Terms and Conditions of Purchase shall apply to all our business relations with our suppliers/sub-suppliers (hereinafter uniformly referred to as "Supplier(s)") and exclusively to the purchase of items of any kind (e.g. any goods such as raw materials, materials, machines, but also work results under intellectual property law) to the exclusion of any deviating terms and conditions of sale and delivery of the Supplier. Insofar as these General Terms and Conditions of Purchase do not contain any provision, the statutory provision shall apply.
- b) Our General Terms and Conditions of Purchase shall apply exclusively. The acceptance of offers and declarations of acceptance with deviating terms and conditions shall not constitute recognition of these terms and conditions, even if we do not object to them again. The same applies to the acceptance of invoices, delivery notes and other documents as well as to the acceptance of the goods and the making of payments.
- c) Any deviation from our Terms and Conditions of Purchase and the supplementary statutory regulation shall require our written consent, i.e. consent in writing or text form (e.g. letter, email, fax), or by EDI (electronic data interchange) in order to be effective.
- d) Unless otherwise agreed, our General Terms and Conditions of Purchase in the version current at the time of our order shall apply as a framework agreement (Section 305 Para. 3 German Civil Code [*Bürgerliches Gesetzbuch - BGB*]) also to subsequent contracts within the meaning of Paragraph a) with the same Supplier without having to refer to our General Terms and Conditions of Purchase again.

## 2. Conclusion and content of contract

- a) Only our written Orders or Orders by EDI and offers confirmed by us in writing or by EDI shall be binding. The term "Order" as used in these General Terms and Conditions of Purchase covers individual Orders, Orders directed towards the conclusion of a framework agreement (hereinafter referred to as "Contract") and Order releases under the Contracts.
- b) Our Orders shall be confirmed in the respective agreed form (in writing, in text form or by EDI). In the case of an Order by email or fax, the confirmation shall be made in the manner specified in the Order, unless otherwise agreed. An Order by EDI must be confirmed by EDI. Any confirmation of one of our Orders shall be deemed unconditional, in particular with regard to the exclusive application of these General Terms and Conditions of Purchase. Any deviation from our Order shall be communicated in the manner described in the Order or as agreed in advance. This shall be deemed a new offer. Acceptance is at our discretion and is only binding if made in writing or by EDI. Deviating or supplementary terms and conditions of the Supplier shall not become part of the Contract even through unconditional acceptance of the delivery.

## 3. DDP Incoterms (2020) and other delivery modalities; transfer of risk; acceptance; delay in performance

- a) Unless otherwise stated on the Order or otherwise agreed, e.g. in the Contract, DDP Incoterms (2020) shall apply to all deliveries in relation to the delivery address stated in our Order or, in the case of call-offs under Contracts, the delivery address stated in our Order call-off. The Incoterm or delivery term specified in the respective contract shall apply to all call-offs under this Contract.
- b) The delivery of goods is to be coordinated with the delivery point named in the Order
- c) Goods shall be accepted on working days (Monday to Friday inclusive) between 7.30 a.m. and 3.00 p.m.. Acceptance of goods outside this time may be refused; if goods are nevertheless accepted, the Supplier may be charged with the additional costs incurred.
- d) For each delivery, the proper, i.e. the usual or agreed accompanying goods documents (such as delivery note, packing list, invoice, consignment note, certificate of origin, supplier's declaration, certificates of the outgoing goods inspection such as certificates of analysis (e.g. "salmonella certificate") and measurement protocols, export and import papers) must be provided.
- e) Acceptance of the goods may be refused if no proper accompanying documents are available in accordance with the Subclause 3.d). Accompanying documents are an essential part of the service. They are necessary, among other things, to enable the receipt and inspection of goods within a reasonable period of time, to comply with existing legal requirements for us, in particular food law requirements, and thus to enable us in particular to further process and distribute the goods produced therefrom.

- f) Unless otherwise agreed, the identity number as well as the order number or call-off number communicated by us must be indicated in all documents accompanying the goods and on the goods packaging. Goods ordered by us must show the date of manufacture, the manufacturing company, the description of the goods and the quantity contained per packaging unit, the identity number, our order or call-off number and the manufacturer's order number.
- g) Papers and goods which do not comply with the requirements of the Subclause 3.f) may be rejected by us. The Supplier shall be liable for all consequences of incorrect, incomplete or delayed accompanying documents; in particular, the Supplier shall reimburse us for all costs incurred due to incomplete or incorrect information. This shall not apply if the Supplier is not responsible for the incorrectness, incompleteness or delay.
- h) If acceptance is prevented by force majeure and other external circumstances for which we are not responsible and which cannot be averted even by exercising reasonable care - e.g. industrial action, operational disruptions, disruptions to the energy supply and the supply of raw materials and materials, transport disruptions, official measures - we shall be released from the obligation to accept delivery for the duration of the disruption, without this giving rise to an obligation to pay damages or transferring the risk of loss or deterioration of the item to us.  
  
If at the time of performance there is no planning certainty as to how long the disruption will last, we may withdraw from the contract. An obligation to pay on our part exists only for services already rendered by the Supplier. This shall also apply in particular in the event of a disruption caused by lawful industrial action of any kind. We may only invoke the above if we have notified the Supplier immediately after becoming aware of the circumstances preventing acceptance.
- i) The agreed delivery dates are binding. Compliance with the agreed delivery dates is essential for our business processes.
- j) As soon as the Supplier must expect that it will not be able to deliver the goods on time, in whole or in part, it must notify us of this in writing without delay, stating the reasons and the expected duration of the delay.

#### **4. Prices, invoices, documents**

- a) The agreed prices are fixed and binding. They include packaging and delivery pursuant to DDP Incoterms (2020) or agreed delivery terms.
- b) The Supplier shall take back packaging material at its own expense upon our request.
- c) A separate invoice shall be issued for each Order to the company named in the Order and shall be sent exclusively by the agreed means of transmission. In the case of Contracts, the invoice shall be issued in relation to the individual order call-off and to the company named therein. An additional dispatch of the original invoice by post and the summary of several Orders on one invoice as a collective invoice are not permitted.
- d) Invoices from the Supplier must always state: the contract/order or call-off number and the item number. In the event of our delayed processing due to incomplete or incorrect invoice details, we shall not be responsible for the delay; our payment period shall be automatically extended by a reasonable period of time. Our claim for complete information remains unaffected.
- e) Unless otherwise agreed, we shall pay within 30 calendar days after receipt of both the delivery (including the proper accompanying goods documents) and the associated complete invoice with the agreed cash discount rates.
- f) The invoice basis for discounts is the total price including incidental costs, value added tax and other taxes (e.g. coffee tax).
- g) We do not owe any interest on maturity. The statutory provisions shall apply to our default in payment.
- h) The Supplier must register in our supplier portal (<https://www.storck.com/en/suppliers>) as well as maintain its own data, in particular the bank data for invoicing, and update it as required.

#### **5. Retention of title**

Retentions of title by the Supplier shall only apply insofar as they relate to our payment obligation for the respective items to which the Supplier retains title. An extended or prolonged retention of title by the Supplier and any obligations associated therewith shall not be recognised by us.

## 6. Compliance with laws and standards, audit law

- a) We manufacture confectionery for consumption. All goods that become part of a consumer unit must in particular comply with the food law requirements of the country of destination, unless there is a separate agreement.
- b) The Supplier undertakes to comply with the applicable IFS Food Standard as well as to apply and comply with the provisions of our Supplier Code to its business and not to violate the human rights and environmental prohibitions of the German Act on Corporate Due Diligence in Supply Chains [*Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten*].
- c) We are entitled to verify through our own employees or third parties by means of an on-site audit once a year or if there is sufficient cause to examine whether the Supplier is complying with the obligations under Subclause 6.b). The Supplier shall grant reasonable access to the relevant areas and documents. Sufficient cause exists if there are indications that the Supplier is not fulfilling the aforementioned obligations or if we must expect a significantly changed or significantly expanded risk situation at the Supplier. Unless otherwise agreed, the inspection may only take place after prior notice and only during the business hours of the Supplier.

## 7. Liability, complaint, supplier recourse and limitation period

- a) The statutory provisions shall apply without restriction to our rights in the event of material defects and defects of title of the items and in the event of other breaches of obligations by the Supplier. In addition, these General Terms and Conditions of Purchase shall apply, in particular the following paragraphs as well as the Subclauses 8 and 10.
- b) Acceptance of the goods by our receiving office does not constitute unconditional acceptance of the goods. The later assertion of claims for defects shall not be excluded thereby.
- c) The goods shall be inspected as soon as and insofar as this is customary in the ordinary course of business and in accordance to the type and intended use. In the case of machine deliveries, an inspection can generally only be carried out once the machines have been loaded.
- d) Notices of defects shall in any case be deemed to have been given in good time if they are given verbally or sent in writing within a period of 8 working days after delivery of the goods in the case of obvious defects, or within 8 working days after discovery in the case of hidden defects. When calculating the period, the day on which the delivery or discovery takes place shall not be included. Working days are Monday to Friday, with the exception of national public holidays.
- e) If no proper accompanying documents are available at the time of delivery and if an inspection in the ordinary course of business is therefore not possible or unreasonably difficult, the time limit for obvious defects shall not begin with the delivery but with the receipt of the proper accompanying documents.
- f) The above provisions grant a minimum period for the submission of notices of defect; they do not exclude the possibility that, according to the circumstances of the individual case, a later notice of defect may be recognised as immediate.
- g) In the event that the goods are defective, we may choose between remedying the defect (subsequent rectification/ "Nachbesserung") and delivery of a defect-free item (subsequent delivery/ "Nachlieferung").
- h) If the Supplier does not fulfil its obligation to subsequent performance - at our discretion by subsequent rectification of the defect or by subsequent delivery - within a reasonable period of time set by us or if it is not in a position to provide subsequent performance, we may rectify the defect ourselves or have it rectified and demand compensation from the Supplier for the expenses incurred in this respect.
- i) We shall be entitled to the statutory rights of recourse in the supply chain (Sections 445 a, 445 b and Section 478 German Civil Code [*Bürgerliches Gesetzbuch/BGB*]) without restriction. These rights of recourse shall also apply if the delivered items have been processed by us or a third party.
- j) The limitation period for our claims due to defects is 24 months from delivery, unless the law provides for a longer limitation period. In any case, upon receipt of our written notice of defect by the Supplier, the limitation period for our warranty claims shall be suspended until such time as the Supplier (a) finally rejects our claims or (b) finally rejects the continuation of negotiations thereon or (c) finally declares the defect remedied.

## **8. Infringement of third party property rights**

- a) The Supplier warrants that the delivered goods are free from third party rights (e.g. patent rights, utility rights, design rights, trademark rights, copyrights and neighbouring rights) pursuant to this Subclause 8, without prejudice to its obligation to indemnify for defects of title pursuant to the above Subclause 7. In particular, the Supplier warrants that no infringement of any industrial property rights occurs in connection with its delivery, in particular through the receipt, use, processing or resale of the delivered items, or that no other rights (e.g. copyrights and neighbouring rights) are infringed by the contractual performance results or their use in accordance with the contract.
- b) The Supplier shall indemnify us - without prejudice to further claims - against all claims of third parties pursuant to the Subclause 8.a); the indemnification obligation of the Supplier shall also include all expenses, including lawyers' fees and other costs of legal defence, which we incur as a result of or in connection with claims asserted by third parties pursuant to the Subclause 8.a). However, claims under this Subclause 8.b) shall not exist if the Supplier proves that it is neither responsible for the infringement of property rights nor should have been aware of the infringement at the time of delivery if it had exercised due commercial care.
- c) The obligation to indemnify pursuant to the Subclause 8.b) shall apply to the Supplier upon our first written request.

## **9. Reservation and transfer of rights; prohibition of reverse engineering; confidentiality**

- a) Insofar as drafts, drawings, samples, models, printing documents, tools or similar objects are provided to the Supplier by us, these shall remain our property and shall be returned to us at any time upon our request.
- b) If the Supplier manufactures drafts, drawings, samples, models, print documents, tools or similar objects for us, these shall become our property upon manufacture; the Supplier shall hold these objects in safe custody for us until they are handed over to us, which we may request at any time. Industrial property rights acquired by the Supplier to the objects shall pass to us; we shall acquire an exclusive, transferable, sub-licensable, spatially and temporally unlimited right of use for all known and unknown types of use, including the right of processing, for performance results capable of being copyrighted or protected in a comparable manner, without having to name the author. The transfer of rights is compensated with the agreed remuneration, unless otherwise prescribed by law.
- c) If the Supplier obtains knowledge of confidential information in the course of the cooperation by whatever means, such information shall be kept secret and protected by appropriate confidentiality measures. It may only be used for the execution of the order for Storck. This obligation also covers information developed by the Supplier for Storck. The confidential information may also be trade secrets. Trade secrets are the information associated with the business operation, which is so far neither known in its entirety, nor in its details or was not accessible without further ado, therefore is of commercial value, is protected by the owner through adequate measures for maintaining secrecy and for which a legitimate interest exists in keeping it confidential. Trade secrets within this meaning are technical information (e.g. methods, procedures, samples, formulas, techniques, inventions, recipes), marketing strategies (e.g. advertising campaigns, new product launches, design blueprints, samples) as well as commercial information (e.g. customer lists, price and financial data, sources of supply and purchase quantities), in particular those, which are marked as "confidential" or "trade secret". In particular, the information may not be disclosed to third parties without our written consent. The same restriction to the use and disclosure can be derived with regard to objects, which embody trade secrets. The Supplier is in particular forbidden from subjecting products or objects to a reconstruction by observing, examining, dismantling, testing or a similar process and from obtaining, exploiting or imitating the secret information embodied therein (so-called Reverse Engineering).
- d) The Supplier shall be liable for any damage incurred by us as a result of a breach of the obligations under the Subclause 9.c) for which the Supplier is responsible. The obligations under Subclause 9.c) shall continue to apply even after termination of the contract. The obligation to maintain secrecy does not exist or expires insofar as it concerns objects or knowledge which are or become generally known without a breach of contract by the Supplier being the cause thereof. All confidential information, including copies made, shall be returned to us after termination of the contract; insofar as they are not yet our property, they shall become our property; they may be used by us without restriction.
- e) Disclosure of the business relationship with us to third parties, including for advertising purposes, is only permissible with our prior written consent, which we may revoke at any time without stating reasons.

**10. Product and producer liability; product warnings and recalls; insurance obligation**

- a) If a claim is made against us by a third party by way of product and/or producer liability due to personal injury or damage to property and if this damage is attributable to a defective product of the Supplier, the Supplier - insofar as it is itself liable in relation to third parties - shall indemnify us against these claims.
- b) If we are obliged to carry out a product warning or a recall due to the defectiveness of a product of the Supplier and the danger to persons and/or property emanating therefrom, the Supplier shall also bear the product warning or recall costs as part of its indemnification obligation under Subclause 10.a). We shall inform the Supplier of any impending product warning or recall measures - insofar as this is possible and reasonable - and give the Supplier the opportunity to comment.
- c) The Supplier is obliged to maintain product liability insurance at its own expense with a sum insured in an appropriate amount per personal injury or property damage. The Supplier must ensure that the insurance covers possible liability claims until they become time-barred. Upon request, the Supplier shall immediately provide us with written evidence of the existence of the aforementioned insurance cover.
- d) Further legal claims remain unaffected.

**11. Lump-sum compensation for cartel damages**

- a) The Supplier guarantees that the prices, terms and conditions and other economically relevant framework conditions offered by it have come about without any infringement of the prohibition of restraint on competition.
- b) If the Supplier or a person commissioned by him or acting on his behalf has breached the above obligation on the occasion of or in connection with the award, we shall be entitled to claim damages from the Supplier. Insofar as a court or an anti-trust authority has legally determined that the Supplier or a person commissioned by it or acting on its behalf has violated a prohibition of restraint on competition, we shall be entitled to claim liquidated damages from the Supplier in the amount of 5% of the net order value plus statutory interest. The proof of a higher or lower damage or non-occurrence of damage shall be reserved for both parties and shall be incumbent on the party claiming the higher or lower damage.
- c) The Supplier is obliged to provide us with all information and documents that enable us to verify the eligibility and scope of claims under this clause. This shall also apply if the contract is terminated or has already been fulfilled. Our other contractual or statutory claims remain unaffected.

**12. Contractual right of revocation/termination in case of deterioration of assets**

We shall be entitled to a contractual right of revocation or extraordinary termination if the Supplier's financial circumstances deteriorate after conclusion of the contract to such an extent that performance in accordance with the contract cannot be expected. Statutory rights of revocation and termination shall remain unaffected.

**13. Prohibition of assignment, subject to Section 354a Para. 1 German Commercial Code [*Handelsgesetzbuch - HGB*]**

The Supplier is not entitled to assign its claims against us to third parties. In addition, Section 354a Para. 1 HGB remains unaffected.

**14. No subcontractors or other third parties**

The Supplier is not entitled to have its services owed to us performed by third parties (e.g. subcontractors) without our prior written consent.

**15. Place of performance**

The place of performance for all deliveries and services of the Supplier is the delivery address pursuant to Subclause 3.a) above.

**16. Applicable law and place of jurisdiction**

- a) These General Terms and Conditions of Purchase and the contractual relationship between us and the Supplier shall be governed exclusively by the laws of the Federal Republic of Germany; the application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- b) The exclusive place of jurisdiction for all disputes arising from or in connection with these General Terms and Conditions of Purchase or the contractual relationship between us and the Supplier shall be Bielefeld. In all cases, we shall be entitled, at our discretion, to invoke the courts at the Supplier's general (overseas, if applicable) place of jurisdiction or at the place of performance (Subclause 3.a) instead.
- c) Mandatory statutory provisions, in particular regarding exclusive places of jurisdiction, shall remain unaffected.

**17. Data protection**

The Supplier shall comply with the applicable data protection provisions.

**18. Severability clause**

Should individual provisions of these General Terms and Conditions of Purchase be invalid, this shall not affect the validity of the remaining provisions.