

# General terms and conditions of purchase (Status 06/2022)



## I. Scope of application

These general terms and conditions of purchase (hereinafter also: GTCP) shall apply solely to all legal relationships in the area of purchase between the Supplier and **DIL Deutsches Institut für Lebensmitteltechnik e.V., DIL Technologie GmbH and DIL Engineering GmbH** (hereinafter: "we" or "us"). Additional or deviating terms and conditions of the Supplier are hereby expressly excluded and apply only if they are confirmed by us in writing. Neither silence on our part nor the acceptance of the performance or its payment shall be deemed as confirmation. Ancillary agreements, amendments or additions to these GTCP are only binding if they have been confirmed by us in writing. These GTCP also apply in their respective version to future transactions with the Supplier, without us having to refer to them again in each individual case.

## II. Conclusion of the contract and contractual amendments

### 1.

The individual contract for the deliveries or services as well as any amendments, ancillary agreements or statements about its termination as well as other statements and notifications must be made in text form, unless otherwise agreed on. All offers made by the Supplier are to be submitted free of charge. A purchase order represents the acceptance of an offer made by the Supplier unless the purchase order differs from the Supplier's offer. References in purchase orders to offers or communications from the Supplier apply solely with regard to the object referred to and only insofar as the purchase order does not contradict the object referred to. If our purchase order represents a new offer according to Section 150 of the German Civil Code and if the Supplier does not accept the purchase order within two weeks after its receipt, we are entitled, but not obliged, to cancel the purchase order. Delivery based on a purchase order is deemed as acceptance of this purchase order.

### 2.

Every accepted purchase order or contract for the delivery of goods concluded in another way is designated a "supply contract" in accordance with these GTCP.

### 3.

Without prior consent in text form from us, the Supplier must not transfer any obligations from the supply contract to third parties.

## III. Prices, payment terms, retention of title

### 1.

The agreed prices are fixed prices plus any value-added tax that may be applicable. If not agreed in the purchase order or elsewhere in writing between us and the Supplier, the Supplier is not entitled to any further claims for payment. Unless otherwise agreed, payment is made within 30 days with no deductions. The time limit starts on receipt of the performances stipulated in the contract and of a valid and verifiable invoice, which is issued indicating the purchase order and/or part number. The time limit starts, however, at the earliest on the agreed delivery date, even if we accept earlier deliveries.

### 2.

The Supplier is not entitled to assign claims against us to which he is entitled to or to have them collected by third parties. The Supplier is only entitled to offset against our claims or to enforce a right of retention if and insofar as his claims are undisputed or have been legally established.

### 3.

In case of a delivery that is not free of defects, we are entitled to withhold payment for the corresponding amount until performance has been provided in accordance with the purchase order. In the case of a delivery that is not free of defects, the Supplier is not entitled to demand late payment interest.

### 4.

For the occurrence of our default, the statutory provisions apply, whereby, in deviation to this, a written warning from the Supplier is necessary in any case. Interest of 5 % points above the base interest rate is to be applied to a monetary debt.

### 5.

The title to the delivered goods is transferred to us upon complete payment. Any prolonged or extended retention of title by the Supplier is excluded.

## IV. Delivery conditions / Place of performance

Delivery shall be made according to the terms specified by us in the respective purchase order. In the absence of an agreement, the delivery is DDP to the place designated by us in accordance with INCOTERMS® 2020. Our purchase order and supplier number is to be specified on the delivery note. The Supplier must inform us of the required official permits and reporting obligations required for the import and utilisation of the delivery items. The place of performance is the place of receipt named by us.

## V. Delayed delivery; early delivery

### 1.

Agreed delivery dates and deadlines are binding. If the delivery is not made on time, we are entitled to the statutory rights. The Supplier must notify us in writing of an apparent delay to its performance without delay specifying the reasons and the anticipated duration of the delay. If he does not meet this obligation, then this is seen as gross negligence, which entitles us, besides the statutory rights to withdraw from the contract or to terminate the contract, to claim damage compensation from the Supplier.

### 2.

If the Supplier is responsible for not complying with the deadlines according to his contractual obligations, all costs resulting from this shall be borne by the Supplier.

### 3.

We are entitled to return early deliveries at the Supplier's expense; we are not obliged to accept an early delivery.

## VI. Packing/Inspection Obligations

The Supplier must ensure, unless specified by us or the mutual customer, that the delivery object is safely packaged in accordance with customary commercial practice. An incoming goods inspection is only made by us with regard to obvious defects and transport damages. The delivery object is examined during the assembly and commissioning process. In this respect, the Supplier waives his right of objection to delayed notification of defects.

## VII. Property provided by us

### 1.

If we or our customers provide the Supplier with tools, templates, matrices, measuring instruments, devices, moulds, samples and associated software, drawings and other accompanying documentation ("property provided"), these remain our property or that of our customer. The Supplier may only use the property provided to manufacture the delivery object or to fulfil the supply contract; the Supplier may not use it for any other purposes or allow others to use it without our prior written agreement. The Supplier must keep property provided in a good condition at its own expense and replace it if necessary. The property provided is to be insured by the Supplier at its own expense against loss to the amount of the replacement costs. The Supplier hereby assigns all his payment claims against the insurer to us; we accept this assignment.

### 2.

The Supplier shall treat the property provided carefully and safely and shall indemnify us against any claims, liability, costs and damage resulting from on in connection with the installation, use, storage or repair of the property provided. We or our customer are entitled to enter the Supplier's company premises during normal business hours and inspect the property provided and the

corresponding recordings. We will advise the Supplier of this 24 hours beforehand in text form.

**3.**

The Suppliers agrees that we are entitled to remove the property provided at any time and without reason and payment or to request his surrender. If we make such a demand, the Supplier must surrender the property provided immediately and prepare it for despatch or deliver it to us or our customer. Any right of retention on the part of the Supplier, for whatever legal reason, is excluded. We shall reimburse the appropriate delivery costs to the Supplier.

**4.**

If the Supplier processes the property provided or combines or mixes it with objects not in our ownership, we shall be given joint ownership to the new product in the ratio of the value of the property provided to the value of the product as a whole.

**VIII. Intellectual property / Industrial property rights / Transfer and granting of rights**

**1.**

We shall retain the title and all other rights, such as copyrights, to the information provided by us to the Supplier. The Supplier must keep documents and objects made available to him as well as copies thereof at his expense and surrender or destroy them at any time on our request. The Supplier is not entitled to a retention of title for whatever reason.

**2.**

The Supplier shall be liable for all claims arising from the violation of industrial property rights or applications for these during the contractual use of the delivery object. The Supplier shall indemnify us and our customers from all claims that may arise from the use of such industrial property rights or industrial property right applications. To the Supplier's own rights to fulfil his obligations assumed in this supply contract, the Supplier shall grant us a non-exclusive, royalty-free, permanent and worldwide right of use for any exploitation of these rights.

**IX. Confidentiality**

**1.**

The Supplier shall treat all commercial and technical details that are not general knowledge and which are entrusted to him by us, in particular drawings, models, templates, patterns, data carriers etc. as confidential and not entrust them or otherwise make them accessible to third parties (including sub-suppliers) without our written consent. The reproduction of such information is only permitted within the framework of operational requirements and the copyright provisions. Sub-suppliers shall be required to enter into the above confidentiality obligations.

**2.**

These obligations on the part of the Supplier do not apply to information which was already legally known to it without obligation to confidentiality on receipt or legally became known to it afterwards without obligation to confidentiality, which is already or will be generally known or for which the Supplier has been given written permission to utilise it otherwise by us.

**3.**

In the event of a breach of the obligations according to the aforementioned provisions, a contractual penalty of Euro 25,000 is incurred by the Supplier for each case of infringement. However, the Supplier retains the right to have the appropriateness of the amount of the contractual penalty determined by a court. Any further claims for compensation to which we are entitled shall be offset against paid contractual penalties.

**X. Warranty / Liability and damage compensation /**

**Recourse Against the Supplier**

**1.**

The Supplier warrants that the contractual object is free of defects and delivered in accordance with our requirements. If the contractual object is faulty, then the Supplier is liable in accordance with the statutory regulations, unless otherwise

provided for in the provisions below. In urgent cases, we are entitled to carry out the repair ourselves or have this done by third parties without a prior attempt at supplementary performance by the Supplier. The Supplier shall bear the costs incurred by this. An urgent case exists in particular when our operational safety is at risk, there is a risk of unusually high levels of damage or, to maintain our ability to supply, it is not possible to wait for a repair by the Supplier.

**2.**

If the Supplier makes use of third parties to provide his performance, he is liable for these as well as for his own agents.

**3.**

In the case of goods with digital elements, the supplier shall be responsible for updating the digital content in any case to the extent that this results from our requirements or a product description of the manufacturer or on its behalf, or if it is necessary for maintaining the conformity of the goods with the contract for the period of the standard useful life.

**4.**

The Supplier is liable for defects which occur within 36 months from receipt of delivery, as long as a longer warranty period is not prescribed by law. If an acceptance is agreed upon, the period shall commence upon the acceptance. The 36-month warranty period also applies accordingly to claims from defects of title; furthermore, claims from defects of title do not lapse on any account as long as the third party that invokes the right can still make a claim against us.

**5.**

In the event of supplementary performance, the above-mentioned periods are extended by the time during which the delivery object cannot be used in conformity with the contract. Claims due to defects lapse at the earliest two months after the claims from our customers are fulfilled by us.

**6.**

The Supplier must indemnify us from third party claims based on product liability, if and to the extent to which the damage was caused by a fault with the delivery object supplied by the Supplier. The right of indemnity only applies to the extent that the Supplier himself would be directly liable.

**7.**

The Supplier shall assign any possible reimbursement claims by an insurance company arising from warranty claims to us; we accept the assignment; the Supplier must submit up-to-date insurance certificates to us on request without delay.

**8.**

In addition to claims for defects, we are fully entitled to statutory claims for expenses and rights of recourse within a supply chain (recourse against the supplier in accordance with Section 445a of the German Civil Code (BGB)). The above shall also apply if the deficient goods have been merged with another product or further processed in any other way by us or by our customer, e.g. by means of incorporation, attachment or installation. By way of derogation from Subsection 4 above, claims of recourse against the supplier shall not under any circumstances become statute-barred, as long as our customer can assert claims of recourse against the supplier against us because the statute of limitations has not expired.

**XI. Quality and documentation**

**1.**

The Supplier must comply with the recognised rules of technology, the safety regulations and the agreed technical data (e.g. notified customer requirements, IMDS requirements or REACH) for its deliveries. Changes to the delivery object require our prior written consent.

**2.**

Regardless of this, the Supplier must constantly check the quality of the delivery objects. The Supplier is obliged to use the documents specified by our quality assurance department for documentation purposes and to comply with specifications in their currently valid version. The Supplier guarantees that the

goods supplied by him are in conformity with statutory and/or official requirements.

## **XII. Origin of goods and preference**

1. The Supplier undertakes to issue all documents including commercial documents, which are required according to the applicable legal requirements for their import to Germany and enclose them with the delivery.
2. On delivery, a valid Supplier's declaration according to the Implementing Act for the EU Customs Code must be submitted with each first delivery. A reference to the delivery is established by specifying the product number on the supplier's declaration.
3. Hereafter, a long-term supplier declaration is to be sent to us at the start of each year free of charge and without being requested.
4. If it is not possible to prepare a supplier declaration with preferential origin status, a declaration of origin must be attached to the delivery.
5. The Supplier is responsible for ensuring the supplier declaration is correct and complete.

For incorrectly prepared supplier declarations and resulting claims from our customers, the Supplier assumes full liability. We check the correctness of a supplier declaration at random using the INF 4 information sheet issued by the Customs Agency. It is not permitted to make a fundamental change to the purchased goods with regard to their condition, the customs tariff number, the country of origin and the preferential status.

## **XIII. Force majeure**

In the case of force majeure, e.g. caused by natural catastrophes, riots, official measures or other unforeseeable and unavoidable events, we and the Supplier shall be released from the mutual performance obligations for the duration of the disruption and to the extent of its effect. The affected party must inform the other contractual partner in full immediately and do everything within reason to limit the effects of such events.

## **XIV. Termination of contract**

1. In the case of a longer term supply commitment, the cessation of payments or the opening of insolvency proceedings, the rejection of the opening of such proceedings due to a lack of assets or the opening of a comparable procedure as well as the submission of the affirmation in lieu of an oath about a contractual partner's assets, entitles the other contractual partner to withdraw from the supply contract regarding the part not yet performed. If we withdraw from the supply contract or a part thereof due to one of the above-mentioned reasons or due to another reason, for which the Supplier is responsible, only the finished delivery objects and those delivered up to the notice of withdrawal in accordance with the provisions of the supply contract shall be paid by us. Another reason for withdrawing from the supply contract or a part thereof is the fact that the Supplier does not meet his obligations to provide supplementary performance within a reasonable period that was set by us. Furthermore, we are entitled to claim damage compensation from the Supplier.

2. In the event of withdrawal from the supply contract or parts thereof by the Supplier, the latter must advise us of this in writing early enough that we are able to have the delivery objects manufactured by another supplier without trouble and according to the requirements. The Supplier is obliged to fulfil the supply contract until the new supplier is able to deliver the contractual object according to the specifications and supply contract. The Supplier is obliged to help us find a suitable replacement supplier and to ensure deliveries from sub-contractors and raw material suppliers for the contractual

object.

## **XV. Anti-corruption law provisions**

1. The Supplier ensures that he will not commit any acts or omissions, which, irrespective of the form of participation, may lead to a regulatory or criminal penalty, particularly due to corruption, by the Supplier, by persons employed by the Supplier or by third parties assigned by the Supplier. The Supplier is responsible for taking the appropriate measures to avoid infringements. For this purpose, the Supplier shall impose the same obligations particularly on the persons employed by him or third parties assigned by him.
2. The Supplier undertakes to provide information about the aforementioned measures on our written request, particularly about their content and implementation. Furthermore, the Supplier shall inform us immediately about the initiation of official investigation proceedings due to a breach. Over and above this, we are entitled to demand information in writing about the breach and the measures taken.
3. In the event of a breach, we are entitled to demand that the Supplier immediately desists and reimburses all damages incurred by us due to the breach.

## **XVI. General Provisions**

1. If the Supplier is a merchant, a legal entity under public law or public-law special funds, then the place of jurisdiction is our respective place of business. We are entitled, however, to also sue the Supplier at another competent court.
2. For the contractual relationship, German law applies with exclusion of the UN Convention on Contracts for the International Sale of Goods (UN sales law/CISG).
3. If a provision is or becomes ineffective, the validity of the remaining provisions shall not be affected by this.