

Nordzucker AG – Küchenstraße 9, 38100 Braunschweig
General Terms and Conditions of Sales and Delivery

- Solely for commercial transactions -

1 General

- 1.1 For all sales by Nordzucker AG (hereinafter referred to as the “Supplier”) to any buyer (hereinafter referred to as the “Customer”), the present General Terms and Conditions of Sales and Delivery (hereinafter referred to as the “General Terms”) shall apply exclusively; conflicting terms or conditions of the Customer differing from the General Terms are not acknowledged by the Supplier, unless it has been agreed explicitly in writing.
- 1.2 The General Terms are an integral part of any sales agreement entered into between the parties (hereinafter referred to as the “Agreement”) whether in writing or otherwise.
- 1.3 Products under these General Terms shall mean any and all industry, retail and foodservice sugar products to be delivered by the Supplier to the Customer (hereinafter referred to as the “Products”).

2 Orders/Call-offs

- 2.1 Single Orders/call-offs under the Agreement (hereinafter referred to as “Orders”) shall be placed with the Supplier’s customer service.
- 2.2 Orders shall as a minimum contain the following information:
 - name of Customer
 - reference to the respective Agreement (e.g. contract number)
 - product
 - quantity
 - Incoterm (place of destination)
 - requested date of delivery
- 2.3 Orders are only binding in case the conditions of the Orders are in compliance with the Agreement. Executed Orders which are not in compliance with the Agreement do not change the terms of the Agreement.

3 Weighing

- 3.1 The parties agree that the weight registered at the Supplier's exit weighbridge shall apply.
- 3.2 If the quantity of the delivery in question is above or below the quantity ordered, the quantity actually delivered shall be considered as performance in accordance with the Order and taken as the basis for invoicing.

4 Delivery Terms

- 4.1 All Products are delivered according to the Incoterms® 2020 as agreed by the parties. If no specific delivery term is agreed between the parties, the delivery will be Ex-Works (Incoterms® 2020) at the factory or warehouse specified by the Supplier.
- 4.2 The Supplier shall without undue delay notify the Customer of any foreseeable delay and the expected duration thereof.
- 4.3 The Customer shall be obliged to purchase the agreed quantity by submitting successive single Orders within the delivery period agreed by the parties. If after the end of the delivery period the Customer has not ordered the whole fixed quantity agreed between the parties, the Customer shall - if the Supplier so requests within one (1) month after expiration of the delivery period - still be obligated to fulfil its obligation to order the remaining quantity as well as pay lump-sum damages to the Supplier in the amount of 0.1% of the agreed net sales price of the non-ordered quantity per calendar day for the delay. The period of time for the calculation of the damages starts with the first calendar day after the expiration of the delivery period and ends on the calendar day when the total outstanding non-ordered volume is delivered to the Buyer. The obligation to pay lump-sum damages is limited to maximum 10% of the agreed net sales price of the non-ordered quantity. The Supplier reserves the right to assert claims in excess thereof. The Customer, on the other hand, is expressly permitted to furnish proof that the Supplier has sustained no damage or losses, or that the amount of the damage or losses suffered by the Supplier is lower than the damages claimed.

5 Price

- 5.1 Agreed prices are always net prices exclusive of VAT and all other taxes and duties. Applicable VAT shall be invoiced in addition to the price.

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- 5.2 In case of a VAT exempt EU supply the Customer is obliged to inform the Supplier about the Customer's applicable valid VAT Identification Number in a timely manner before the first delivery and any change of that number as the case may be. Upon request the Customer is furthermore obliged to provide the Supplier with all relevant information (such as date and place of arrival of goods etc.) which entitles the Supplier to invoice the delivery as a VAT exempt EU supply.
- 5.3 Unless otherwise agreed, the price will be on an Ex-Works (Incoterms® 2020) basis.

6 Terms of Payment

- 6.1 Unless otherwise agreed between the parties in writing, invoices shall be due and the invoice amount transferred to the Supplier's account within thirty (30) calendar days after the date of invoice without any deductions. Any transaction charges shall be borne by the Customer.
- 6.2 In case of late payment, the Supplier reserves the right to charge interest in accordance with applicable national law. Furthermore, the Supplier reserves the right to claim further damages for delay of payment.
- 6.3 In the event that the Customer is late in paying the due payments for more than ten (10) calendar days, the Supplier is entitled to make further deliveries conditional on pre-payments or securities.
- 6.4 No amounts may be retained from or offset against the Customer's payments to the Supplier except to the extent that the Customer's counterclaims have been accepted by the Supplier in writing or are *res judicata* (i.e. have been finally adjudged to the Customer).

7 Transfer of Risk

- 7.1 The risk of loss of or damage to the Products shall pass to the Customer upon delivery according to the agreed Incoterms® 2020 (cf. clause 4).

8 Inspection

- 8.1 § 377 HGB shall be applicable.

9 Performance Obligation/ Limited Warranty

- 9.1 At the delivery, the Products shall comply with the specification(s) as agreed between the parties in writing.
- 9.2 The Supplier makes no warranty/guarantee, express or implied, with respect to any merchantability or fitness for a particular purpose or use of the Products, unless agreed upon in writing.

10 Defects/Non-conformance

- 10.1 Provided that the Customer has made a written notification according to clause 8.2 in time, the Supplier must at its own expense and at its own discretion either (1) repair or (2) replace the defective or non-conforming Products within a reasonable period of time or (3) issue a credit note in relation to the defective or non-conforming Products in question.
- 10.2 Any part of the defective or non-conforming Products that are replaced by the Supplier shall become the property of the Supplier upon receipt.
- 10.3 Should the Supplier negligently fail to remedy in accordance with clause 10.1 within a reasonable time, the Customer shall be entitled to request a reduction in the price correspondent to the defects or non-conformance or to cancel the Order. Orders not affected by the defects or non-conformance cannot be cancelled.
- 10.4 The Customer can only make a claim for repair, replacement, cancellation and/or reduction in price if the Customer has given a written notification thereof within twelve (12) months from the transfer of risk. However, this shall not apply in case of intent or fraudulent concealment of defects or non-compliance with guaranteed characteristics.
- 10.5 The Customer's remedies for defective or otherwise non-conformant Products are limited to the provisions set out above. However, clause 11 shall remain unaffected.

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11 Liability

- 11.1 The Supplier shall be liable for wrongful intent and gross negligence subject to the statutory provisions, also for its employees and other agents in the performance of its contractual obligations (Erfüllungsgehilfen).
- 11.2 The same applies in case of damages negligently caused to life, body, health as well as in case of guarantees provided by the Supplier.
- 11.3 For property and financial losses as a result of negligence, the Supplier and its employees and other agents in the performance of the Suppliers contractual obligations shall only be liable for the violation of essential contractual duties; however, only up to the amount of the foreseeable and typically damages at the time of entering into the contract; essential contractual duties are such which characterize the fulfilment of the contract and of which the Customer may rely on. In addition, the Supplier's liability is excluded.
- 11.4 Nothing in the foregoing provisions shall affect the Supplier's liability, if any, pursuant to the German Product Liability Act.
- 11.5 In the event that the Customer becomes aware that the Customer's products including the Supplier's Products and/or the Supplier's Products have caused damage – or risk hereof – the Customer shall immediately notify the Supplier hereof in writing. Such notice shall not exempt the Customer from its obligation to mitigate such damage.

12 Intellectual Property Rights

- 12.1 All intellectual property rights (in any form) connected to the Products are the exclusive property of the Supplier.
- 12.2 Any intellectual property right of the Supplier shall be used only for the purpose of the Customer's use/resale of the Products. Any other purpose requires the Supplier's prior written approval.

13 Force Majeure

- 13.1 Neither party shall be responsible for any delay or other failure in performing its obligations under the Agreement if such breach is caused by a Force Majeure event.
- 13.2 Force Majeure means an event that could not have been foreseen and is beyond the reasonable control of the party affected thereby. Force Majeure shall comprise but shall not be limited to fires, floods, crop failure, earthquakes, explosions, diseases, plagues, epidemics, pandemics and the resulting consequences, traffic hold-ups, riots, strikes, lockouts, shortage of raw materials, insufficient access to transport, freight embargoes, military actions, acts of terror and intervention by the state or other authority. In the event that the Supplier's sub-supplier is affected by any of such events and this interferes with the Supplier's performing of its obligations, it shall also be considered as a Force Majeure event.
- 13.3 If a Force Majeure event occurs, the affected party shall promptly give notice thereof (if possible in writing) to the other party.
- 13.4 The Force Majeure event shall not entitle the Customer to cancel Orders that have already been placed. If the Force Majeure event continues for more than sixty (60) calendar days either party shall have the right to terminate the Agreement with immediate effect by giving written notice to the other party. Neither party shall be entitled to claim damages or any other costs whatsoever due to such termination.

14 Retention of Title

- 14.1 The Supplier reserves title to the delivered Products until such time as all payments (including possible interest and costs) under the Agreement have been received. In the event that the Customer violates the Agreement, particularly in the event of default in payment, the Supplier is entitled to take back the delivered Products at any time.
- 14.2 The Customer is entitled to resell the delivered Products in the ordinary course of its business; the Customer does, however, hereby assign to the Supplier, already at this time, all claims on its customers or third parties that accrue to the Customer due to such resale, up to the amount of the invoiced sum (including value-added tax) of the Supplier's claim, irrespective of whether the delivered Products have been resold without being processed or after processing.

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- 14.3 If the delivered Products are inseparably combined or mixed with other objects/products that do not belong to the Supplier, the Supplier shall become co-owner of the new object thereby created in proportion to ratio of the value of the delivered Products (invoiced sum, including value-added tax) to the other objects/products with which it has been connected or mixed at the time at which such connection or mixing was performed. If the mixing is performed such that the Customer's objects/ products is to be considered the primary object, it is agreed that the Customer will transfer proportionate co-ownership thereof to the Supplier. The Customer shall hold the Supplier's sole property or shared property created in this manner in custody for the Supplier.
- 14.4 If the achievable value of the Products of security to which the Supplier is entitled pursuant to the foregoing provisions exceeds the sum of the Supplier's claims by more than 10%, the Supplier is obligated, at the Customer's request, to release Products of security of the Supplier's choice that exceed such sum.

15 Claimant's Default

- 15.1 In the event that the Customer is unable to receive the agreed Products on the agreed date and time of delivery, the Customer shall immediately notify the Supplier hereof, indicating the cause of the (expected) delay and a specification of the time at which the Customer expects the receipt can take place, which shall be subject to the Supplier's approval. In such case the risk of loss and damage to the Products shall be transferred to the Customer as if delivery had occurred on the originally agreed delivery date.
- 15.2 The Customer shall compensate the Supplier for any expense or any losses that the Supplier may incur in connection with the Customer's claimant's default.

16 Confidentiality

- 16.1 All Orders, the Agreement and all associated documents as well as information which are revealed as business secrets (by marking or by its nature) between the parties shall be kept confidential by the parties. The parties shall, however, be entitled to disclose confidential information to their affiliates (Sections 15 seqq. Stock Cooperation Act). Furthermore, the parties shall be entitled to disclose confidential information to financial institutions and their advisors for financing purposes, as requested by mandatory law or necessary for the fulfilment of the Agreement.

17 Assignment

- 17.1 Neither party is entitled to assign its rights and obligations under the Agreement to a third party without the prior written consent of the other party. Section 354a German Commercial Code shall remain unaffected.

18 Governing Law and Jurisdiction

- 18.1 The Agreement including the General Terms shall be governed by and construed in accordance with German law, excluding however the Private International Law regarding conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 18.2 The Supplier and the Customer agree that any dispute or claim arising out of or in connection with the Agreement and/or the General Terms, or the breach, termination or invalidity thereof shall be exclusively settled by Land court ("Landgericht") Braunschweig.

19 Miscellaneous

- 19.1 If any term of the Agreement or these General Terms is found to be invalid or unenforceable or incomplete under applicable law, such term shall be deemed omitted and shall in no way affect the remaining terms. The provision in question shall be deemed to have been replaced by the provisions which would be agreed between the parties in consideration of the commercial aims of the Agreement and these General Terms.
- 19.2 Amendments to the Agreement are only valid if agreed in writing between the Supplier and the Customer.

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- 19.3 Any waiver by the Supplier of a breach of any provision of the Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 19.4 The original version of the General Terms is made in the English language. In the event of any discrepancy or contradiction between the English version and the German translation thereof, the English version shall prevail. However, in the event of any conflict between the English legal meaning and the German legal meaning of the General Terms, the German legal meaning shall prevail
- 19.5 The present General Terms shall enter into force as of 01.06.2020.