

## **General Terms and Conditions of Purchase of Erlenbacher Backwaren GmbH** (a company of the FRONERI Group)

### **§ 1 General, scope of application**

(1) These General Terms and Conditions of Purchase (hereinafter called "TOP") shall apply to all our orders, also future orders, with our business partners (hereinafter called "Supplier"). However, the TOP shall apply only if the Supplier is an entrepreneur (§ 14 German Civil Code [BGB]), a legal entity under public law or a public law special fund.

(2) These TOP particularly apply to contracts for the purchase and/or delivery of movable property (hereinafter called "Goods") irrespective of whether the Supplier produces the Goods himself or buys them from sub-suppliers (§§ 433, 651 German Civil Code [BGB]). Unless otherwise agreed, these TOP shall apply in the version valid at the time of our order, respectively in the last version announced to the Supplier in writing as framework agreement for future contracts of the same type and without us having to refer to these again in each individual case.

(3) These TOP shall apply exclusively. Any conflicting, divergent, additional and supplementary General Terms and Conditions of the Supplier shall only apply if we have expressly agreed to them in writing. Silence on our part in respect of any conditions of the Supplier, the acceptance of delivery or payment does not constitute consent to any conditions of the Supplier. If our Supplier does not agree to the foregoing, it shall immediately inform us thereof in writing. In this case, we may withdraw our orders without the Supplier being entitled to assert any claims against us. We hereby expressly object to the standard reference to suppliers' own General Terms and Conditions.

(4) Individual agreements reached in an individual case with the Supplier (including collateral agreements, supplements, and amendments) shall in all cases have precedence over these TOP. In the absence of comprehensive evidence to the contrary, a written contract or our written confirmation is decisive for the content of such agreements.

(5) Legally relevant declarations and notifications that are to be submitted after conclusion of the contract (e.g., setting of deadlines, reminders, notifications of defects, termination, withdrawal), require the written form in order to be valid.

(6) References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly changed or are explicitly excluded in these TOP.

(7) In these TOP, Working Days are Monday to Friday, provided that they are no public holidays at the place of performance.

(8) The written form required according to these TOP is also deemed complied with if communications are sent by facsimile or e-mail.

### **§ 2 Conclusion of contracts, specification**

(1) Offers and cost estimates shall be made in writing and shall in any case be free of charge for us. Orders shall only be legally binding if they are made in writing.

(2) The supplier immediately confirms in written form the receipt of the order.

(3) The respectively agreed specifications of the Goods constitute the basis of the order by us. Particularly our approvals of prior supplied samples, templates, descriptions or other examples of goods, as well as those specifications and product descriptions that - e.g., by designation or reference in our order - are subject of the contract or otherwise effectively incorporated in the contract, apply as agreements regarding the quality. Among others, quality features are function, operating speed and precision of supplied goods. If the sample, the template or other examples of goods deviate positively from previous specifications according to our view, and if we approve them in writing to the Supplier, this is deemed an agreement regarding the quality.

(4) The Supplier is obligated to possess a documented Quality Management (DIN EN ISO 9001) system and to execute same in connection with our orders at all times. The Supplier shall grant us access to his business premises for the purpose of quality audits to a necessary extent and upon prior arrangement (see § 7).

(5) The object of delivery also includes installation and operating instructions, service manuals, a spare parts catalogue, test protocols and reports as well as verifications regarding Certificates of Analysis (CoA) if relevant for the respective product. Upon written request, the Supplier shall furthermore deliver to us other registration documents and/or certification documents for the ordered goods. In addition, we are entitled to conduct random checks on outgoing goods before their dispatch to us, following prior coordination.

(6) Certificates provided to us by the Supplier are a part and basis of the contract. The Supplier is obliged to inform us about the expiry or non-extension of certification in advance and in due time. Should the certificate become invalid within the contractual term, we shall be entitled to withdraw from the contract

(7) The Supplier is obligated to inform us regarding required permits and duties to report regarding the import and the operation of the goods as well as further delivery items. Respective documentation (e.g., customs documents) has to be delivered to us together with the delivery of the goods.

(8) The Supplier guarantees that the Goods delivered by him (including the packaging) comply with the valid German and EU statutory regulations and the standards generally deemed acceptable at the time in question, in particular the guidelines in the German Food Book (Deutsches Lebensmittelbuch) as well as the specifications taken as the basis of the order, or the special conditions specified in the order. The Supplier also guarantees that the Goods have been manufactured and treated under impeccable conditions and with due care and using the necessary hygiene and quality control measures.

(9) If the deliveries include technical material (this includes the packaging material), the Supplier guarantees that the technical material meets current technological standards. Machines must be designed utilizing standard machine components according to the respectively applicable DIN/EN. Machine elements and parts have to be designed and arranged in a manner

allowing fast and efficient service, inspection, and exchange, particularly without having to first detach other machine elements. In addition, all goods have to be approved by the respectively responsible inspection authorities for the intended designated purpose in addition to possessing any protective devices demanded by authorities at the time of transfer of risk.

### § 3 Delivery time and default in delivery

- (1) The delivery time specified in our purchase order is binding.
- (2) The Supplier is obliged to inform us immediately and in writing if circumstances occur or become evident to him that indicate that the agreed delivery time cannot be complied with; he is also obligated to notify us in writing regarding the expected duration of the delay.
- (3) The Supplier is only entitled to invoke the lack of necessary documentation, data, provisions etc. to be supplied by us if the Supplier has demanded those in writing and has not received them within a reasonable period.
- (4) If the Supplier does not render its performance or does not do so within the agreed delivery time, or if the Supplier is otherwise late with performance, then our rights - particularly our rights to rescission and damages - shall be governed by the statutory provisions. The regulations in § 3 (5) shall remain unaffected.
- (5) If the Supplier is in default, we are entitled to demand a contractual penalty in the amount of 0.3 % of the agreed net price per Working Day. However, the total of the contractual penalty shall amount to maximally 5 % of the agreed net price. We are entitled to demand the contractual penalty as well as the fulfilment and, as the minimum amount, compensation owed by the Supplier according to the statutory regulations. However, the incurred contractual penalty shall be set off against a claim for damages.
- (6) The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims based on the delay in delivery.

### § 4 Performance, delivery, transfer of risk, default of acceptance

- (1) Delivery has to occur free of charge to the place specified in the order ("DAP" resp. "DDP" in accordance with Incoterms 2010). If the place of destination has not been stated and nothing else has been agreed, delivery shall be made to our place of business in Gross-Gerau. The relevant place of destination shall also be the place of performance for the delivery and a possible supplementary performance (debt to be discharged at creditor's domicile).
- (2) Unless otherwise agreed in an individual case, delivery is only possible on Working Days between 6.00 a.m. and 4.30 p.m.
- (3) The Supplier shall only be entitled to partial deliveries with our prior written consent.
- (4) The delivery has to be accompanied by a delivery note. The delivery note must contain the following data: date and content of the delivery, our order code defined in the order, the SAP material number of our purchaser, the best-before date, the production date and the height of the pallet. If the delivery note is missing or incomplete,

we are not responsible for any resulting delays in processing as well as payment.

- (5) The Supplier is obliged to package the Goods at his expense in a manner that will prevent damage from being incurred during transport and storage.
- (6) In case delivery takes place on pallets, the Supplier must only use exchangeable EURO pallets (Federal Railway standard) in faultless condition. Deliveries on non-returnable and special pallets are only permitted if we have expressly approved these.
- (7) The risk of accidental destruction and accidental deterioration of the goods is transferred to us upon handover at the place of fulfilment or upon acceptance, provided this has been agreed. As regards all other respects, the statutory provisions governing contracts for work and services (Werkvertragsrecht) shall apply to acceptance. It is deemed equivalent to the handover or acceptance if we are in default with the acceptance.
- (8) In case of deliveries arriving earlier than agreed upon, we reserve the right to decline acceptance and return the Goods at the expense of the Supplier. If the Goods are not returned in case of premature delivery, the Goods are stored at our premises at the expense and risk of the Supplier until the delivery date. A premature delivery does not affect the agreed due date for payment.
- (9) Default in acceptance shall occur in accordance with the statutory regulations. However, the Supplier must expressly offer us performance, even if a defined or definable calendar period is agreed for an act or contribution on our part (e.g., provision of material). If we are in default of acceptance, the Supplier can demand compensation for its extra expenses in accordance with the statutory provisions (§ 304 German Civil Code [BGB]). If the contract relates to non-fungible Goods that are to be produced by the Supplier, the Supplier shall only be entitled to further-reaching rights if we are obliged to provide assistance and are responsible for the failure to provide the assistance.
- (10) Ownership in the Goods shall transfer to us with handover against receipt or acceptance.

### § 5 Prices, payments, delay in payment

- (1) Unless otherwise agreed in writing, the price stipulated in the order is deemed a fixed price.
- (2) Unless otherwise agreed in the individual case, the price comprises all services and ancillary services of the Supplier (e.g., assembly, installation) as well as all further costs (e.g. proper packaging, transport costs including any transport and liability insurances, postage, customs).
- (3) If no other arrangements are made, the payment period is 14 days with 3 % cash discount or 30 days net. The payment period commences upon receipt of a proper invoice (§ 5 (4)) and delivery of the Goods or – if agreed – upon acceptance of the Goods.
- (4) All invoices must contain our order number, the item number, the item description, the delivery quantity, and delivery address. Should one or more of these details be missing and processing is delayed by us in our normal business operations, the payment periods mentioned in § 5 (3) are extended by the period of the delay.
- (5) Payment shall, as a basic principle, take place by means of transfer. The date on which the remittance order is received by our bank shall be the date used to

determine whether payments have been made on time. For any payment delays, we owe interest at 6 % above the base interest rate according to the terms of § 247 German Civil Code (BGB).

(6) Payments to the Supplier do not constitute acceptance or approval regarding the Supplier's contractual performance.

#### **§ 6 Off-setting, retention, assignation**

(1) We shall be entitled to rights of set off and rights of retention as well as the plea of non-performance and all other pleas, to the extent provided by statutes. In particular, we shall be entitled to retain due payments as long as we still hold claims arising from incomplete or faulty services vis-à-vis the Supplier.

(2) The Supplier is only entitled to offsetting or retention of Goods if its counterclaims are not disputed by us or have been awarded by final and non-appealable judgement.

(3) The Supplier is not entitled to assign claims against us to third parties. This does not apply with regards to monetary claims.

#### **§ 7 Quality assurance**

(1) We or a third party appointed by us shall be authorized to perform a company audit in order to verify that the contractually specified quality and safety requirements have been met. In particular, we or the third party shall be entitled to check the raw materials, auxiliary supplies and packaging materials on the Supplier's premises. We or the third party shall also be entitled to monitor production procedures during working hours, to take samples and to read the production, quality and monitoring records for the Goods to be delivered. Excluded from this are details relating to specific process methods insofar as these are trade secrets held by the Supplier. Furthermore, we or the third party undertake not to divulge to other third parties any knowledge of internal matters concerning the Supplier gained during such an inspection. The performance of a company audit and the findings of same shall have no effect on evaluation of deficiencies in the delivered Goods.

(2) If the company audit reveals that the Supplier has not met the requirements specified in § 7 (1), we shall grant the Supplier a reasonable period of grace to rectify the shortcomings. If the Supplier fails to do so within the period of grace, we shall be entitled to rescind existing supply contracts with immediate effect. It shall not be necessary to set such a deadline if the complaints cause major, acute threats to product and occupational safety.

#### **§ 8 Security declaration**

(1) The Supplier warrants

a) that any Goods produced, stored, or shipped on our behalf, or otherwise delivered to or transferred to us, are produced, stored, processed or handled and loaded at secure business premises and cargo handling facilities and are protected from any unauthorized access during production, storage, processing or handling, loading and shipping.

b) that appointed personnel for the production, storage, processing and handling, loading, shipping, and acceptance of such goods is trustworthy.

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c) that any business partners acting on his behalf have also been instructed in the measures that must be taken to ensure the security of the aforementioned supply chain.

(2) The Supplier hereby gives his consent for his data to be checked against the sanctions lists under EU Regulations (EC) No. 2580/2001 and No. 881/2002.

#### **§ 9 Third party rights**

(1) The Supplier warrants that all Goods delivered by him are free from property rights of third parties, in particular copyrights and intellectual property rights.

(2) In the event that a third-party asserts claims against us due to a violation of its rights, we are obliged to inform the Supplier immediately in writing.

(3) If, as a result of a violation of a third party right, we are impeded in using the Goods delivered by the Supplier, and if the Supplier is unable to acquire a right of use in our favor from the holder of the right, the Supplier must promptly deliver an equivalent replacement that does not violate any third party rights or, at our request, modify the Goods in such a way that the violation of the third party right no longer exists. Further legal claims shall remain unaffected.

(4) If a third party asserts any claim against us because of a violation of the rights mentioned in § 9 (1), the Supplier shall be obliged to indemnify and hold us harmless from such claim upon first written request. In connection with the indemnity, the Supplier also agrees to reimburse all necessary expenses incurred by us due to litigation in connection with a violation of the aforementioned rights. This claim arises regardless of fault of the Supplier.

(5) If the Supplier fails to comply with its obligations set out in § 9 (3) and (4), § 3 (7) shall apply accordingly.

(6) The claim for indemnification pursuant to § 9 (4) shall expire 2 years from the time of knowledge, or in the event of grossly negligent ignorance, of the circumstances giving rise to the claim. Notwithstanding our knowledge or a grossly negligent lack of knowledge, the claim for indemnification shall become statute-barred 10 years after the date upon which it arises

(7) Our further legal claims with regards to defects shall remain unaffected.

#### **§ 10 Warranty**

(1) Unless otherwise determined below, the statutory regulations apply for our rights in case of material defects and defects of title of the supplied goods, including wrong and short delivery, improper installation, defective installation, or operating instructions as well as other breaches of duty by the Supplier.

(2) In particular, the Supplier is liable in accordance with the statutory regulations for the supplied Goods being suitable for the contractually intended utilization, compliance with the respectively latest state of science and technology as well as with the official and legal regulations. Furthermore, the Supplier is liable to ensure that the supplied Goods possess the guaranteed or agreed quality, particularly that they comply with the agreed specifications.

Management:  
Dr. Bertram Böckel (Chairman)  
Fritz Kellermann  
Harald Lochmann  
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Swift-Code DEUTDEFF33  
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(3) Our duty of inspection is limited to defects discernible during our incoming goods inspection through external inspection as well as random quality control. If acceptance is agreed, a duty of inspection does not exist. Notifications of any defects as to quality or quantity are deemed immediate and in due time if they have been received by the Supplier within 10 Working Days upon delivery of the Goods. Any hidden material defects shall be deemed to have been objected to in a timely manner if the notification is sent to the Supplier within 10 Working Days after discovery.

(4) All costs for verification or subsequent improvement (including any de-installation and installation costs, costs for the transport of rejected Goods) are borne by the Supplier. The above also applies if it should become evident that a defect did not exist. Our liability for compensation in case of unjustified demands of remedy remains unaffected; our liability is hereby limited to those cases whereby we recognized or gross negligently failed to recognize that no defect existed.

(5) If the Supplier does not comply with his obligation of subsequent fulfilment - at our discretion by way of elimination of the defect or by the supply of defect-free Goods (including the retrieval of the defect Goods) - within an appropriate period determined by us, or if he has finally and unjustly refused subsequent fulfillment, we are entitled to remedy the defect ourselves and/or have it remedied by third parties on our behalf without further ado and demand compensation and/or an appropriate advance payment from the Supplier for the expenditures required for this matter.

(6) If subsequent fulfilment by the Supplier has failed or is unacceptable for us, e.g., for reasons of threat to the operational safety, the impending occurrence of disproportionate damages or any other special urgency, a period of grace is not required. We shall inform the Supplier of such circumstances as well as the type and extent of the required and/or initiated urgent measures without undue delay. In special cases, we are entitled to demand from the Supplier to immediately initiate interim measures, unless the expenditures for these measures are grossly disproportionate to our interest in an interim improvement. The Supplier's obligation of final defect remedy shall remain unaffected.

(7) Our rights according to the statutory regulations, particularly the reduction of the purchase price or the withdrawal from the agreement as well as compensation for damages and expenditures remain unaffected from the stipulations above.

(8) The period of limitation for claims based on material defects and defect of title is:

a) 3 years for Goods that are subject to the two-year period of limitation (§ 438 (1) No. 2 German Civil Code [BGB]);

b) 6 years for buildings and building materials (§ 438 (1) Nr. 2 a) and b) German Civil Code [BGB]).

The period shall be extended for the period of time in which the defective delivery/service cannot be used as intended, due to the defect.

(9) The limitation period for warranty claims shall be suspended once the Supplier has received our written defect notice. The suspension of the limitation period is concluded when the Supplier has rejected our claims, declares that the defect has been removed or the

Supplier has informed us in writing that negotiations on the warranty claims are concluded.

### § 11 Liability of Supplier

Unless stated otherwise in these TOP and unless otherwise agreed in an individual case in writing, the Supplier shall be liable for any violation of contractual duties, regardless of the legal cause (e.g., fault in the execution of the contract, default, material defect and defect of title, violation of any other duty, or tort) in accordance with the statutory provisions.

### § 12 Product liability

(1) If the Supplier is responsible for any damage to the product, it shall be obliged to indemnify us on first demand against any claims by third parties insofar as the cause lies in its sphere of authority and organization, and it is liable itself in any dealings with external parties.

(2) Under his obligation to indemnify, the Supplier must reimburse any expenses pursuant to §§ 683, 670 German Civil Code (BGB) that arise out of or in connection with any recourse taken by third parties, including recall campaigns carried out by us. We will inform the Supplier of the content and scope of the recall measures to be performed - to the extent possible and reasonable - and allow opportunity for comment. Our further statutory claims remain unaffected.

### § 13 Insurance

(1) The Supplier has to conclude a business liability insurance including product liability insurance at his expense and must assure that the insurance cover exists until all contractual services have been performed. The amount of coverage for the above named insurance must be at least 3 million euros for any one occurrence (damage to property or injury to persons and the financial loss resulting from it). Further claims for damages shall remain unaffected.

(2) The Supplier is obliged to verify the existence of the liability insurance cover annually, and this is to be done by providing us with a confirmation issued by the insurer. Each confirmation has to include the amount of coverage.

### § 14 Sustainability

Sustainability has become an essential part of our corporate policy. We are working continuously to act more sustainably. We also expect our suppliers to take into account all three pillars of sustainability - namely ecology, economy and social responsibility - in the acquirement and manufacture of the products needed by us or the services to be provided to us, in order to use resources in the most resource-conserving way.

### § 15 Business Ethics and Compliance

The supplier shall comply with Froneri's Supplier Code of Conduct (as notified to supplier from time to time), all applicable law, including but not limited to all laws relating to bribery, corruption, modern slavery, tax evasion and financial crime applicable to the supplier's performance of this Agreement. The supplier shall comply with any export control and economic sanctions laws in any part of the UK, EU, USA and any territory from which the supplier conducts its business. The supplier shall have in place and maintain policies and

procedures to ensure compliance with this clause 15. The supplier shall procure that its personnel (including all of its employees, agents, contractors, representatives and subcontractors) comply with this clause 15 and shall remain directly liable for any breach of this clause 15 by those personnel. The supplier shall immediately notify Erlenbacher of any breaches of this clause 15. Any breach of this clause 15 shall be a material breach of this Agreement entitling (but not obligating) Erlenbacher to terminate immediately without further liability to the supplier.

#### **§ 16 Information Security**

The Supplier shall maintain a comprehensive information security programme aligned with best industry standards (and a copy will be made available to Froneri/Erlenbacher on request). The Supplier will maintain measures and procedures that continually ensure the security, integrity and confidentiality of Erlenbacher's information. Any actual or suspected breach of security affecting Erlenbacher information shall be notified to Erlenbacher by the Supplier immediately.

#### **§ 17 Audit**

Erlenbacher/Froneri (and third parties acting on behalf of Erlenbacher/Froneri) shall be entitled to access any of the Supplier's premises, personnel, facilities, systems or records (and those of any of its subcontractors or suppliers) as may be reasonably required in order to verify the Supplier's compliance with its legal obligations, the terms of this Agreement and best industry practices.

#### **§ 18 Choice of law and place of jurisdiction**

(1) The law of the Federal Republic of Germany shall apply to these TOP and all legal relations between us and the Supplier under the exclusion of all international and supranational (contractual) legal regulations, in particular the UN Convention on the International Sale of Goods ("CISG").

(2) Exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Frankfurt am Main. However, we are also entitled to file an action at the general place of jurisdiction of the Supplier.

(3) The invalidity of any provision of these TOP shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible.