



ZUKOWA® Food

General Terms
and Conditions

Article 1

Definitions

- 1.1 Terms used in these General Terms and Conditions [hereinafter: **GTC**] have following meanings:
- Seller of goods – LUKOWA Food AG
 - Buyer of goods – the Seller's opposite party, Buyer/principal
 - Service provider – the party engaged by Seller in order to perform certain activity
 - Agreement – According to the parties the term individual agreement covers a written agreement, an accepted offer, a verbal agreement, etc. as defined in Art. 1 of the Swiss Code of Obligation.

Article 2

General Terms

- 2.1 The provisions of GTC shall apply to each and every offer, order and agreement between the Seller and the Buyer/Service provider. GTC shall not apply only if the parties have specifically excluded their application in writing in the Agreement or any other written document signed by both parties.
- 2.2 The applicability of General Terms and Conditions and/or any other document/regulation of the Buyer/Service provider is expressly excluded, if such documents exist, unless agreed otherwise by both parties in writing.
- 2.3 Should it be the case that one or more of the provisions contained in GTC are invalid or revoked for any reason whatsoever, or if the Seller has agreed in writing to the applicability of one or more deviating conditions, it shall not affect the applicability of all other provisions contained in this GTC and its terms shall remain in full force and effect.
- 2.4 In case that some provisions contained in GTC prove to be invalid for any reason whatsoever, the essence and the intention of Seller when stipulating such provision shall be construed to have the same meaning as originally intended to the greatest extent possible.

Article 3

Offers/Quotations/ Prices

- 3.1 All offers given in any form are free of any and all obligation, unless expressly stated otherwise in the offer.
- 3.2 All information/details given to the Buyer/Service provider in relation to an offer and/or specifications in relation to quantity, size, weight, content, etc., represent only estimates of the Seller and will become binding on the Seller's part when it is expressly confirmed in writing.
- 3.3 A composite quotation will not obligate the Seller to deliver only part of the goods as detailed in the offer and/or quotation for a sum which is adequate with the part of the goods in question.
- 3.4 The prices given in the agreements are in euro currency, apply to all deliveries, include loading costs and are exclusive of VAT, government levies, export duties and shipping, freight and packaging costs, unless expressly agreed otherwise in writing.

- 3.5 Any changes related to any commercial term of the offer/agreement may result in the failing of the Seller to meet the period of delivery indicated prior to changes.
- 3.6 Where the Seller is a party to an agreement, the agreement shall first be considered binding where:
- Both parties have signed an agreement drafted for the purpose; and/or
 - Written confirmation of an order placed by the Buyer is issued by the Seller;
 - In absence of either of the aforementioned, an ex – works delivery of the goods in question takes place.
- 3.7 Any additional arrangements or changes made between the parties will only become binding if the Seller confirms such changes in writing. Any and all costs arising out of additions and/or changes to the agreement/ offer will be borne by the Buyer/Service provider.
- 3.8 Where orders and/or changes in the performance of such orders are made orally or by telephone, the Buyer/Service provider will bear the risk of the non – execution or inadequate execution of that order.
- 3.9 Should it be the case that a natural person enters into an agreement on behalf of or for another natural person, by signing of the aforementioned agreement he declares that he is authorized to do so. This person will, in addition to the other natural person, considered to be jointly and severally liable for all obligations arising out of the agreement it has signed.
- 3.10 Any kind or type of discount and/or commission shall not apply unless expressly agreed in writing by both parties.
- 3.11 The agreed prices will be based on cost – determining factors which were applicable at the moment of quotation. The Seller reserves the right to pass on any and all costs to the Buyer/Service provider arising out of any changes to those cost – determining factors arising upon the offer or order confirmation which it cannot reasonably control [per instance if the price increases by suppliers and other developments or any other change which cannot be controlled by the Seller].

Article 4

Payment

- 4.1 Payment will take place within 30 [thirty] days starting from the date of invoice in a manner to be indicated by the Seller in the currency of the agreed prices. Deviations in payment are only valid when agreed in writing by both parties. Complaints about the sum of the invoices do not suspend the obligation of payment.
- 4.2 The Seller is entitled to request payment in advance;

- 4.3 Should the Buyer default on its payments within the agreed term, the Buyer will be in default. The Buyer will then owe interest of 2.00% per month on the invoice amount, or part thereof, unless the statutory interest rate or statutory commercial interest rate is higher, in which case the higher rate shall apply. The interest on the amounts due and payable will be calculated from the date the Buyer is in default until the date of full payment. The Seller will then be entitled to demand the immediate payment of all outstanding invoices and suspend any further deliveries until all invoices have been paid in full or adequate security has been provided, if Seller agreed to the extension of payment with securities.
- 4.4 Payments will first be used to cover the costs, then the incurred interest, and lastly the principal and the accrued interest.

Article 5

Delivery in Other Packaging Materials/ Retail Packaging

- 5.1 If the goods are delivered to the Buyer in packaging materials and/or retail packaging other than EPS packing, the following provisions in this article shall apply.
- 5.2 Packaging materials and/or retail packaging for which a deposit has been charged and that have been delivered by the Seller, will be taken back at the invoice price applicable at the time of taking it back, possibly increased by a fixed packaging compensation in accordance with the applicable regulation to such effect. The packaging materials to be handed back must be returned clean, empty and in a satisfactory state, so that it is suitable for its purpose and fresh horticultural produce.
- 5.3 If a certain type of packing or retail packaging is not available, the Seller shall have the right to offer the goods in another type of packing or retail packaging in consultation with the Buyer. The Seller will increase or decrease the invoice amount by the higher or lower costs as each particular case may be.
- 5.4 When returning the packaging materials using the Seller's own means of transportation, the packaging materials must be made ready for transport in a sorted configuration in order for it to be collected by the Seller's transport.
- 5.5 Any packaging materials not delivered by the Seller shall only be taken back if the products concerned are included in the Seller's range.

Article 6

Transfer of Risk/ Transport

- 6.1 The risks of loss or damage to the goods that are the subject of the Agreement/offer will be passed to the Buyer/Service provider upon the transfer of title or actual delivery of the goods to the Buyer/Service provider and, accordingly, will be put at the disposal of the Buyer/Service provider or a third party designated by the Buyer

- 6.2 If the Seller accepts responsibility for the transport, storage, shipment, packaging, etc., of the goods that are the subject of the Agreement/ offer, the manner thereof will be determined by the Seller, provided no further instructions are given by the Buyer to the Seller. Unless agreed otherwise, the Buyer shall accept all risks in this matter, including negligence of the transport company.
- 6.3 Any specific requests made by the Buyer regarding the transport/ shipment/storage will only be effected if the Buyer has accepted that it will bear the extra costs such requests bear.

Article 7

Export of Goods

- 7.1 The Buyer guarantees that, if an import certificate or permit is required for importing the shipment in the country of destination, such import certificate or permit has already been obtained or will be obtained prior to dispatch all in order for the import to be made to the country of delivery.

Article 8

Investigation, Complains

- 8.1 Upon delivery, but no later than 24 [twenty four] hours after delivery, the Buyer/Service provider is obliged to inspect the shipment. The Buyer/Service provider shall verify whether the quantity and quality of the shipment is in accordance with the Agreement/order.
- 8.2 Any samples shown to the Buyer will be assumed to have been shown as an indication and the shipment will not necessarily need to comply with given sample, unless expressly agreed otherwise in writing. Any deviation in quality, color, weight and size of 0.00% to 5.00% will be tolerated by the Buyer. The toleration of decay of the shipment is 3.00%, in excess of which complaints may be filed.
- 8.3 Any visible deficiencies will be reported to the Seller in writing, stating detailed reasons, within 24 [twenty four] hours of delivery. The complaint will describe the deficiencies in as much detail as possible to enable the Seller to react in an adequate manner.
- 8.4 If a complaint is not filed within the aforementioned period of time, the Buyer will remain obliged to accept and pay for the delivered goods. Should the Buyer wish to return any defective goods, then this will be done with the prior written permission of the Seller at the expense of the Buyer, in the original packaging and in a way indicated by the Seller.
- 8.5 The Buyer shall allow the Seller, at his first request, to inspect the goods, in order for the Seller to verify the accuracy of the complaint.
- 8.6 Should it be the case that a complaint is justified, in accordance with the aforementioned provisions, the Seller shall replace the delivered goods, unless this has by then become meaningless for the Buyer.

Article 9

Retention of Title

- 9.1 All goods delivered and yet to be delivered will remain the exclusive property of the Seller until all claims of the Seller have been paid in full.
- 9.2 As long as the ownership of the goods has not been transferred to the Buyer, the Buyer may not pledge the goods or grant any other rights in respect of the goods to third parties, unless in the ordinary conduct of its business. Upon the Seller's first request, the Buyer will undertake to take all necessary actions regarding the creation of a right of pledge on the claims that the Buyer obtains or will obtain pursuant to the subsequent delivery of the goods to its buyers.
- 9.3 The Buyer shall keep the goods delivered under retention of title with due care and recognizable as the property of the Seller.
- 9.4 The Seller is entitled to recover the goods delivered under retention of title and still with the Buyer if the Buyer defaults on its payment obligations or is experiencing payment difficulties or may run into payment difficulties by the sole discretion of the Seller. The Buyer shall at all times grant the Seller free access to its premises and/or buildings to allow the Seller to inspect the goods and/or exercise its rights.

Article 10

Guarantee

- 10.1 The Seller will give no guarantee on its goods unless the parties have expressly agreed otherwise in writing prior to shipment of goods.

Article 11

Suspension and Termination

- 11.1 The Seller is entitled to suspend the performance of its obligations or to terminate the Agreement/made offer, should it be the case that:
- The Buyer/Service provider does not fulfil its obligations under the Agreement, or does not do so properly or in due time;
 - After conclusion of the Agreement, the Seller becomes aware of circumstances that give good reason to expect that the Buyer/Service provider will not fulfil its obligations, or will not do so properly or in due time. In the event there is good reason to expect that the Buyer/Service provider will fail to perform its obligations in whole or in part, suspension is only permitted to the extent justified by the nonperformance;
 - When the Agreement was concluded, the Buyer/Service provider was asked to provide security for the performance of its obligations under the Agreement and this security is not provided or is inadequate. Once security has been provided, the Seller's power to suspend its obligations will lapse, unless the provision of such security is unreasonably delayed as a result.
- 11.2 Seller is entitled to terminate the Agreement if circumstances arise of such nature that performance of the Agreement is impossible or, according to standards of reasonableness and fairness, can no longer be demanded, or if other circumstances arise of such nature that the Agreement may not be reasonably expected to be maintained unchanged.

- 11.3 In case the Agreement is terminated, the Seller's claims against the Buyer will be immediately due and payable. Should the Seller suspend its obligations, the Seller retains its rights ensuing from the law and the Agreement. The Seller reserves right at all times to claim damages.

Article 12

Liability and Disclaimer

- 12.1 In case the goods delivered by the Seller are defective, the liability of the Seller will be limited to what has been arranged in these GTC.
- 12.2 The Seller will not be held liable for any damage resulting from substances prohibited by law, bacteria or insects found on or in the delivered goods, or non-compliance of the delivered goods with statutory requirements or other requirements set or to be set by the government in relation to use of these products.
- 12.3 If it is established that the Seller is liable for any direct damage, such liability is limited to the amount of the payment to be provided by the Seller's insurer, or at least the invoiced amount for the purchased goods, or at least the part of the Agreement to which the liability pertains.
- 12.4 The limitations of liability for direct damage, as contained in these GTS, does not apply if the damage is the result of willful intent or gross negligence on the part of the Seller or its subordinates, which has to be proven by adequate proofs.
- 12.5 The Seller shall never be deemed liable for:
- Any indirect damage, including consequential damage, loss of profits, savings lost, and damage resulting from business interruption.
 - Any damage ensuing from any advice given. Advice is always given on the basis of facts and circumstances known to the Seller and in mutual consultation, in which respect the Seller shall always be guided by the intentions of the Buyer;
- 12.6 The Buyer shall indemnify the Seller against all claims for damages the Seller lodged by any third parties engaged by the Buyer in respect of the performance of the Agreement, unless the Seller is guilty of willful intent or gross negligence, which has to be proven by adequate proofs. Also, the Buyer shall indemnify Seller against all claims made by any third parties engaged by the Buyer and relating to or ensuing from the Buyer's use of the products or services provided by the Seller.
- 12.7 Any employees of the Seller who are the subject of a claim can rely on the provisions in this Article as if they were party to the Agreement concluded by the Seller and the Buyer.

Article 13

Force Majeure

- 13.1 The Seller will not be obliged to perform any of its obligation if the Seller is prevented from doing so as a result of circumstances that cannot be attributed to gross negligence or willful intent of the Seller and for which the Seller cannot be held responsible pursuant to the law.
- 13.2 Besides the events considered to be force majeure events according to the law or case law, force majeure will include in these GTC all external causes, foreseen or unforeseen, in respect of which the Seller cannot exert any control, including but not limited to traffic jams, power/computer failures, import and export impediments, quotas, plant diseases, natural disasters, illness of employees and delivery interruptions on the part of the Seller's suppliers, but as a result of which the Seller is unable to perform its obligations, including strikes at the Seller's business.
- 13.3 The Seller also has the right to invoke force majeure in the event that the situation which frustrates further performance occurs after the Seller should have fulfilled its obligations.
- 13.4 To the extent the Seller has already fulfilled part of its obligations under the Agreement, or will be able to do so, when the situation of force majeure arises and separate value can be assigned to the part fulfilled or yet to be fulfilled, the Seller will be entitled to separately invoice the part fulfilled or yet to be fulfilled. The Buyer shall pay this invoice as if it were a separate agreement.

Article 14

Intellectual and Industrial Property

- 14.1 Without prejudice to the provisions contained in these GTC, the Seller reserves the rights and powers accruing to the Seller pursuant to intellectual or industrial property law.
- 14.2 Any documents, items or other materials printed or electronic files created by the Seller in the context of the Agreement remain the property of the Seller, regardless of whether these have been made available to the Buyer or to any third parties, unless agreed otherwise. The Buyer shall return these to the Seller upon the Seller's first request.

Article 15

Non-disclosure and Data Protection

- 15.1 The Seller and the Buyer shall oblige their staff and any third parties engaged by them to treat as confidential any information that is designated or recognizable as confidential, and not to disclose such information or make it accessible to third parties or to employees not engaged in their mutual relations. Confidentiality shall be maintained prior to the conclusion of the agreement and shall remain in force following termination of the contractual relationship.

Article 16

Duration 16.1 These GTC shall apply indefinitely until altered and/or supplemented in which case the new version shall apply.

Article 17

Disputes 17.1 The competent court in Lucerne has exclusive jurisdiction to examine and resolve any disputes. The Seller has the right to submit any dispute to the court competent according to the law.

Article 18

Applicable Law 18.1 These GTC and all legal relationships between the Seller and the Buyer are governed by the Swiss law.

