

## A – VALIDITY, ORDER CONFIRMATION

All our orders are subject to these conditions to the exclusion of all other conditions, in particular the general terms and conditions of the supplier, unless expressly agreed otherwise between the parties.

If we do not receive any amendments prior to the order confirmation, the delivery shall be deemed as the tacit acceptance of the terms of the contract and our general terms and conditions of purchase.

In the case of international sales (subordinated to our general terms and conditions of purchase), the latest version of the INCOTERMS also applies.

## B – QUALITY AND ACCEPTANCE, AUDITING DUTY FOR DEALERS

Our orders must be carried out by the suppliers in accordance with the ISO-9001 standard and the IFS standard.

The supplier is responsible for the quality of the delivered products and implements a quality management system that is appropriate for meeting the criteria agreed upon with VAN HEES.

The delivered products must comply with the agreed specifications and the conditions agreed upon with VAN HEES, including the approved samples in the case of sample products (see point E). No changes may be made without our express consent, even for technical reasons. In particular, the supplier must inform us of any change in the recipe, any change in the specification or declaration, any production relocation and any new procedures used in the process with regard to the products in the order.

A delivery note signed by us or our representatives shall not be regarded as an acknowledgement of the delivered goods in accordance with the contract. We reserve the right to demand an agreed contractual penalty due to improper fulfilment (§ 341 BGB [German Civil Code]) (despite the acceptance of the delivery).

### Non-conformance:

The acceptance of any delivery which does not correspond to the defined specifications in the above-mentioned document or which shows obvious defects, can be directly rejected by us or must be collected by the supplier at their own cost within 3 days of notification of the rejection due to non-conformance. Once this notice period has elapsed, we reserve the right to return the deliveries to the supplier at their cost and risk.

We are entitled to access the supplier sites within normal business hours and to a reasonable extent for the supplier in order to assess their quality management system, risk assessment and the hygiene status of production. *For this we will specify the arrangement of procedures for the assessment in advance to the appropriate person at the supplier.*

If the supplier is the dealer and does not manufacture the goods, the following also applies:

The supplier is obliged to check whether the goods supplied by them meet the contractually agreed specifications (and according to point B). The supplier must also carry out regular audits of the goods at the manufacturer. Once the goods are supplied by the manufacturer, the supplier must conduct their own tests on the goods and document the results. The paperwork must be sent with the delivery.

## C – DELIVERY, TRANSFER OF RISK AND OWNERSHIP, RIGHT OF RETENTION, CONTRACTUAL PENALTY, DAMAGE CLAIMS

The supplier is entitled to make partial deliveries and render partial services only with our explicit prior consent. The specified delivery dates in our orders are binding and deliveries are understood to be ex-works or ex-department. They are based on our production planning and must be strictly adhered to. Any incident which could jeopardise adherence to the deadlines must be reported immediately. The ordered amounts must be complete and delivered at the specified times at the specified sites or plants.

We reserve the right to reject or return carriage forward any excess or unordered goods delivered without an order.

In the event of exceeding the delivery deadlines (or – if in individual cases no fixed delivery date is agreed – when exceeding a deadline set by us), we

are entitled to withdraw from the contract, even without a further warning to reject the goods, and in so far as the supplier is culpable for the delivery delay – to demand damages instead of the service.

The costs incurred by us as a result of a delay (especially for a substitute performance) shall be borne by the supplier.

In the event of a faulty or incomplete delivery or service by the supplier, we are entitled, without prejudicing our other rights, to withhold receivables of the supplier from the existing business relationship to a reasonable extent until proper fulfilment of performance.

### Contractual penalty for delivery delay:

With each delivery that occurs after the fault of the supplier after the contractual deadline, we are entitled to claim a contractual penalty amounting to 0.2% of the order volume per working day for the delivery in question, however a maximum of 3% of the order volume. The assertion of further claims for damages is not excluded by the assertion or payment of the penalty, however a penalty that has already been paid is to be deducted from the damages claimed. We have the right to claim damages in full within the scope of legislation. This includes consequential damages, loss of production damages and lost profits.

The transfer of risk takes place upon acceptance at our factory. Each consignment of goods must be accompanied by a delivery note in which the details of the order are specified (date, VAN HEES order number, amount and type of goods, exact packaging, batch number, expiry date, etc.).

A certificate of analysis must be received (at labor@van-hees.com) by the delivery date of the products at our laboratory. The ownership of the delivered goods shall be transferred to us with the delivery. Any extended or expanded retention of ownership is excluded.

## D – PRODUCT LIABILITY, RECALLS, TRACEABILITY

In the event of claims being made against us due to a fault of the goods delivered by the supplier with regard to manufacturer or product liability, the supplier shall indemnify us from the resulting manufacturer or product liability in the scope to which they are liable to us in this internal relationship. This does not apply if and in so far as the supplier is able to prove that the fault was neither present nor created at the time the risk was transferred (ref. C). The supplier is obliged to conclude and maintain product liability insurance which is in proportion to the product liability risks for the goods supplied by them, but a minimum amount of €3,000,000 for personal injury and damage. At our request, the supplier must prove to us the existence of insurance immediately by means of a copy of the insurance policy.

The supplier ensures the full, consistent and complete traceability of the delivered goods and the appropriate documentation. Items of traceability include the (end) delivered product, as well as all raw materials (such as ingredients, raw materials, additives, auxiliary supplies, etc.), the date of manufacture, the packaging materials and the manufacturing or production process and the delivery (especially the lot, the batch and the scope). At our request, the supplier is obliged to notify us immediately of all information regarding traceability.

The supplier is obliged to maintain active crisis management thereby ensuring that processes run smoothly in the event of a crisis (regarding the delivered goods).

For recalls by the supplier, by authorities or those initiated by third parties regarding the goods supplied to us, or the goods in which the goods supplied to us have been processed, the supplier is obliged to provide us – immediately and without delay and in writing – complete and comprehensive information about the recall, the reason and the goods concerned (in particular, this information must include the delivery locations and delivery dates). The supplier must check with us to ensure that the recall has come to our attention.

The damage or necessary expenses caused to us by the recall must be reimbursed by the supplier. This includes in particular any costs incurred by us for planned recalls or warnings, insofar as these are required by official orders, legal regulations or due to other circumstance which a prudent businessman deems necessary to initiate.



In the event of a recall made by us of the goods delivered to us or the goods in which the goods supplied to us have been processed (in this case, due to a fault in the delivered goods), the supplier is also obliged to reimburse the costs incurred by us from the recall damage and any necessary expenses. This does not apply if the recall is unjustified.

## **E – SAMPLES FOR PRIOR APPROVAL/ Advance samples**

On request, especially for spices or specific products, the supplier must provide a representative sample of the proposed item together with a certificate of analysis and, if appropriate, any prescribed test results by the specified date at the specified location. The products must comply with the agreed specifications to be suitable for their intended use and meet the requirements of the applicable regulations. The order is only binding after notification of the approval of the item from which the sample was taken.

## **F – CUSTOMS, PRICES AND PAYMENT CONDITIONS**

Imported goods shall be delivered with the duty paid. The supplier is obliged to provide the required declarations, documents and information at their own expense to permit inspections by the customs authorities and provide the required official confirmations.

The prices listed in the order are tax-free, apart from VAT, and are fixed prices that cannot be changed.

The order number must be stated in the invoice and the invoiced items (number, description, quantity) for each delivery must be specified including the numbers and dates of delivery notes, the type of shipment and the delivery location.

Each amount that is due from an order can be offset in full against the amount owed to VAN HEES by the supplier for any reason.

## **G – PAYMENT**

If no explicit provisions exist to the contrary, the payments will be made in accordance with the conditions specified in the order.

## **H – WARRANTY, INDEMNITY**

We are entitled to the statutory warranty and claims for damages in full, without prejudicing further provisions of these terms and conditions. As subsequent performance, we can either demand that the goods are rectified or the delivery of conforming goods – unless it is a fault in a single item.

The limitation period for our claims from material defects shall be – if the law does not specify a longer limitation period – 36 months from the transfer of risk. In the case of cancellation, the supplier shall bear the costs of removal and the return freight, and undertakes any necessary disposal, including the costs incurred. If there is a product recall by the supplier, the supplier is obliged to bear the costs.

Limitation of liability clauses of the supplier does not have any effect on us.

The supplier shall indemnify us against all third party claims against us – regardless on which legal basis – arising from a material defect or defective title or any other fault in a product delivered by the supplier. The supplier shall also refund us the necessary cost of legal proceedings.

## **I – CONFIDENTIALITY, INTELLECTUAL PROPERTY RIGHTS, INDEMNITY**

The supplier must keep any information received confidential. They are obliged to take all precautions to prevent the spread of the information received to carry out an order. The documents, models and samples which are transferred to the supplier, or any that they are aware of, are and remain our sole property. All rights regarding patents, utility models, registered design, trademarks, copyrights and other intellectual property rights with respect to the information and documents provided to the supplier by us remain with us. The supplier is not entitled to register or obtain property rights for themselves or third parties on the basis of any of the submitted information or documents.

The supplier guarantees that third-party rights do not conflict with the intended use of the delivered goods, especially the property rights of third parties. If we are nevertheless held responsible for possible violation of third-party rights, the supplier exempts us hereof and from any related obligations.

## **J – ADVERTISING**

Our orders are confidential. They must not be used (not even as a reference) for direct or indirect advertising in any way without our express permission.

## **K – REPEATED DISRUPTIONS TO SERVICE**

If the supplier essentially produces the same defective or late delivery or services or a similar type of defective or late delivery or services again after a warning, we reserve the right to withdraw immediately from all such goods or services contracts in question and our further claims (such as claims for damages) shall remain unaffected.

## **L – TRANSFERRING, OFFSETTING**

The supplier is not entitled to transfer claims from and in connection with the individual deliveries beyond the application scope of § 354a HGB (German Commercial Code) to third parties or otherwise to third parties. We are entitled to offsetting and retention rights irrespective of other rights arising from the contract and these terms and conditions at least within the scope of legislation. The supplier is only entitled to offset undisputed or legally established claims.

## **M – PLACE OF JURISDICTION AND APPLICABLE LAW**

All our contracts involving execution and all the related claims of both parties are subject to German law under exclusion of the UN Sales Convention and the rules of conflict of international private law, particularly the Rome I Regulation. Exclusive court of jurisdiction is Walluf, Germany.