

**General terms and conditions of purchase (ABB)  
for the procurement of goods and services between DEMETER-Felderzeugnisse GmbH (pur-  
chaser, hereinafter referred to as “DFE”) and the supplier/contractor (hereinafter referred to  
as “Contractor”)**

**1. General scope of application**

1.1 The General Terms and Conditions of Purchase (GTCP) apply to all orders, deliveries and future business transactions of Demeter-Felderzeugnisse GmbH, hereinafter also referred to as DFE, with suppliers or contractors, hereinafter also referred to as Contractor. When concluding a contract in accordance with the GTCP, the Contractor confirms that he is an entrepreneur and not a consumer. For all deliveries and also for all future business transactions, the following GTCP shall apply exclusively, unless expressly agreed otherwise. Terms and conditions of the Contractor that are contrary to or deviate from these GTCP shall not be accepted, unless DFE has expressly agreed to them in writing. These GTCP also apply if DFE carries out the pick-up without reservation being aware of conflicting or deviating conditions of the contractor.

1.2 All agreements between DFE and the Contractor are set down in writing in the order. The employees of DFE are not authorised to make deviating agreements verbally. Verbal agreements are set out in written order confirmations from DFE by fax or e-mail. The order confirmation, by which previous verbal agreements are summarised, is authoritative for the determination of the content of the contract, insofar as the Contractor does not object without undue delay.

1.3 Insofar as reference is made to Incoterms, the Incoterms (International Commercial Terms) of the International Chamber of Commerce (ICC) shall apply in the version valid at the time of the conclusion of contract, unless expressly agreed otherwise in the contract.

1.4 In addition to the GTCP, the following special terms and conditions shall apply subordinately, depending on the subject matter of the contract, with the proviso that in the event of disputes, the arbitration clause under clause 13 shall apply in deviation from the aforementioned conditions.

1.4.1 In trade with fruit and vegetables: The conditions for the trade in fruit and vegetables, whether fresh, frozen or intended for industrial use (COFREUROP), shall apply.

1.4.2 In trade with grain, by-products, sole feed products: The uniform conditions for the German grain trade as well as the ancillary conditions for the trade in organic grain of Verein der Getreidehändler [grain traders' association] of Hamburger Börse e.V. as well as the ancillary conditions to the uniform conditions for the German grain trade for transactions or, in the case of contracts for malting barley, the uniform conditions for the German grain trade together with the Additional Provisions for Transactions in German Malting Barley.

1.4.3 In trading in oil, oil meal and comparable products: The uniform conditions in the German grain trade following the oil mill terms and conditions of the respective mill with the oil mill conditions for the respective mill shall apply.

1.4.4 In trade with seeds: The general terms and conditions of sale and delivery for seeds in accordance with the Saatgutverkehrsgesetz [German seed marketing act] with the exception of seed potatoes and sugar beet seeds (AVLB Saatgut) shall apply.

1.4.5 In trade with potatoes, seed potatoes:

For purchases within Germany: The German terms and conditions for potatoes, Berliner Vereinbarung [Berlin agreement] 1956, version of 9th December 2010, shall apply.

For purchases outside Germany: RUCIP 2006 - Rules and practices of the Inter-European Trade in Potatoes, including the regulation on the assessment of potatoes, shall apply.

1.4.6 In trade with compound feed: Hamburger Futtermittel-Schlusscheine [Hamburg contract notes on feed] shall apply.

## **2. Delivery times, delayed delivery, contractual penalty**

2.1 The delivery times/deadlines stipulated in the order shall be binding and shall be deemed to have been met only if the object of the contract including the pertaining delivery documents has arrived at the agreed place of receipt.

2.2 All documents shall be enclosed in German or at least in English and in duplicate. These documents shall be part of the scope of the order even if not specifically mentioned and shall be delivered with the other items at the time of transfer.

2.3 The Contractor is in default without further ado in the event of non-compliance with agreed delivery dates. The delay entitles DFE, at its discretion, to withdraw from the contract after setting a reasonable period of grace (insofar as this is not dispensable according to the legal regulations) and/or to demand compensation under the legal preconditions.

2.4 If compliance with the delivery dates/periods is at risk, the contractor must inform DFE in good time of the impending hindrance and its expected duration. Claims due to delay remain unaffected by this.

2.5 If the Contractor is in default, DFE can additionally claim a contractual penalty of 0.3% of the total contract price for each working day of the delay in delivery/service, but no more than 5% of the total contract price, taking into account any compensation for damages. The claim to a contractual penalty remains valid despite unconditional acceptance of the delayed delivery, provided that it is asserted at the latest at the time of settlement of the invoice claim - in the case of contractually agreed instalments up to the time of payment of the final instalment. The contractual penalty is then deducted directly from the invoice amount. Further claims and rights of DFE due to delay or due to non-fulfilment remain unaffected.

2.6 If the Contractor sells or distributes goods intended for sale according to this contract elsewhere against or without payment and for this reason does not fulfil his delivery obligations or does not fulfil them in time, DFE is entitled, after unsuccessful setting of a grace period, to rescind the contract in whole or in part and/or to make a covering purchase at the supplier's expense for the delivery shortage. DFE is entitled to declare the rescission not only with regard to the undelivered quantity, but also with regard to further remaining quantities still to be delivered at this time within the framework of the contract. A grace period is not required for the exercise of the aforementioned rights, if a firm deal exists, the contractor seriously and finally refuses the delivery or other special circumstances exist, which justify an immediate covering purchase.

## **3. Adjournment of receipt/acceptance**

In case of force majeure or other external circumstances which DFE could not foresee and/or for which DFE is not responsible, DFE shall have the right to adjourn the receipt of deliveries and/or performances or acceptance correspondingly.

## **4. Samples**

The Contractor agrees that DFE or a third party commissioned by DFE may take samples from the contractual sites at any time in order to examine these for residues and contaminants.

DFE may demand from the Contractor representative samples of the batches/lots of the contractual product intended for delivery, even on several occasions.

The costs for shipping the samples shall be borne by the Contractor.

## **5. Limitation of liability**

Claims for damages and reimbursement of expenses can only be asserted by the contractor against DFE and its vicarious agents in case of intent or gross negligence.

This limitation of liability does not apply to damages from injury to life, body or health and from the breach of essential contractual obligations, which are based on a negligent or intentional breach of duty by the legal representative or a vicarious agent. Material contractual obligations are those whose fulfilment is essential for achieving the purpose of the contract and on whose compliance the Contractor regularly relies and may rely. In the event of a breach of material contractual obligations, the Contractor's claims for damages and reimbursement of expenses in the event of simple negligence shall be limited to the foreseeable damage typical for the contract, with the exception of personal injury.

## **6. Place of performance, acceptance and transfer of risk**

6.1 Delivery shall always be made DAP (in accordance with Incoterms 2020) to the destination named in the order, which shall also be the place of performance.

The risk of accidental loss or accidental deterioration is transferred to DFE at the place of performance. Quantities and quality determination are always carried out at the place of unloading, the place of destination.

6.2 Should a delivery be rejected for quality reasons, it is at the discretion of the Contractor to have the quality determined by an officially recognized expert appointed by him. The costs arising from the complaint shall be borne by the defeated party.

6.3 Pallets or packaging suitable for exchange, such as, for example, EUR pallets, big packs, etc., shall not be paid but only exchanged. Only flawless, clean pallets or packaging may be used. If EUR pallets or packaging no longer suitable for exchange are used, these will be charged to the supplier at replacement value.

6.4 Lose items; bulk goods:

a) If collection EXW in accordance with Incoterms 2020 has been agreed, it shall be incumbent on the Contractor to ensure that the loading point can be driven to and from without danger for the purpose of loading and that it can be reached without hindrance via sufficiently paved, load-bearing roads that can be driven on by heavy trucks.

Any damage to transport vehicles as a result of unsuitable access/transit roads shall be borne by the Contractor.

b) Waiting times at the loading station shall not exceed 1.5 hours. Any additional waiting time beyond that shall be charged to the Contractor.

c) In case of pick-up by DFE, freight charges shall always be calculated on the freight rate for 25 t net goods. If less than 25 t net are delivered, the freight charges shall be borne by the Contractor on a pro-rata basis.

In addition, the supplier shall bear pro rata freight charges for shortfalls and undesired particles. Loaded and empty vehicles shall be weighed on officially calibrated scales.

d) The Contractor shall be obliged to duly seal each shipment and to attach the seal number to the goods receipt.

## 7. Invoice and payment

7.1 The agreed prices shall be fixed prices including costs for packaging, transport and insurance, expenses, licensing fees as well as public charges. Value added tax shall be shown separately.

The invoice must always be sent in duplicate to the ordering department of DFE indicating the person placing the order and the ordering department.

7.2 Unless otherwise agreed, payment shall be made less 3% discount within 14 days or else net within 30 days. The payment term shall commence upon receipt of a verifiable, legally correct invoice, but not prior to defect-free performance of contract and/or acceptance of goods. In case of defective performance, DFE shall have the right to withhold the payment on a pro-rata basis until due performance has been made. Payment itself does not constitute any recognition of receipt or compliance of the performance.

## 8. Assignment, set-off, right of retention

Without DFE's prior written consent, the Contractor shall not be entitled to assign its claims against DFE or to have these collected by third parties.

If extended retention of title has been agreed, consent shall be deemed to have been granted. This shall not affect the stipulations in sec. 354a HGB [German commercial code]. The Contractor may not claim any right of retention and may not declare set-off unless the counterclaim is undisputed or determined by a non-appealable court decision.

## 9. Compliance with statutory provisions; requirements for the delivery of organic goods

9.1 In fulfilling his contractual obligations, the Contractor undertakes to comply with all applicable statutory provisions, in particular the applicable food and feed law regulations and, if applicable, transport regulations.

9.2 The Contractor undertakes to comply with the provisions of Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labelling of organic products (EC Organic Regulation) and Commission Implementing Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (Organic Implementing Regulation) and its successor regu-

lations (EU) No. 2018/848 and No. 2020/464 and to oblige its suppliers accordingly. The Contractor shall subject itself and its suppliers to the control procedures laid down for organic farming and shall submit the documents required for a flow of goods control. Copies of the current certificates or the current certificates of conformity shall be made available by the contractor immediately after they have been submitted to DFE. DFE or a third party commissioned by it shall be authorised to inspect the cultivation area, production and storage.

9.3 The Contractor is obliged to notify DFE immediately if it is not or has not been recognised by the association or as organic supplier.

The Contractor assures that no proceedings have been initiated against it by an inspection body (according to EC Regulation) or by his association or that no accusations have been raised which could lead to the withdrawal of the accreditation as an organic company. If such accusations are raised during the term of the contract, it is obliged to inform DFE without undue delay.

9.4 The Contractor shall be fully liable for all damages incurred by DFE from the violation of these obligations or from a possible loss of accreditation as an organic company, unless it can prove that it is not responsible for the violation.

9.5 The Contractor assures that it will comply with all regulations of Regulation (EC) No. 834/2007 during storage and transport and any regulations of the DFE which serve to ensure these regulations and which will be made available to the Contractor separately.

9.6 The Contractor shall hand over a batch certificate to DFE on request.

9.7 In the case of contractual goods that are designated as "association goods", the Contractor also undertakes to comply with the respective association guidelines.

9.8 The products to be delivered must in any case be free of pesticides, pest control and storage protection agents, prohibited substances as well as contamination with heavy metals, radioactivity and other undesirable substances.

9.9 The marketing standards of Regulation (EU) 1308/2013 shall apply to fresh market goods.

## **10. Liability for material defects and defects of title**

10.1 The Contractor warrants that its deliveries/services comply with the applicable laws and legal regulations of the Federal Republic of Germany and the European Union, e.g. accident prevention regulations, the recognised rules of technology, in particular any applicable DIN and VDE standards, the requirements of Regulation (EC) No. 852/2004 on food hygiene, veterinary law - where applicable - and the stipulated specifications. All products subject to the CE marking obligation must be accompanied by a declaration of conformity without being requested to do so.

10.2 The Contractor must inform DFE in writing of any reservations about specifications, drawings or other documents belonging to the order before it begins with the execution of the order. The contractor bears the risk for the correctness and the implementation/execution of drawings, calculations and other technical documents of the Contractor.

10.3 DFE is obliged to inspect the goods for quality and quantity deviations within a reasonable period of time after complete delivery and, if applicable, loading and assembly activities owed by the Contractor. The notice of defects is on time if it is received by the Contractor within a period of 7 working days, calculated from the receipt of the goods, or in the case of hidden defects, from the time of discovery.

10.4 DFE is entitled to the legal claims for defects without restriction; the Contractor is liable to the legal extent. If the Contractor does not fulfil its obligation to rectify or replace within a reasonable period of time, despite being requested to do so, then DFE is entitled to take the necessary measures itself at the expense and risk of the contractor.

10.5 Warranty claims become time-barred within 3 years from the acceptance of delivery of the goods, unless expressly agreed otherwise. The same shall apply to claims based on defects of title. The statutory limitation provisions in the case of supplier recourse pursuant to § 445b BGB shall remain unaffected.

10.6 The Contractor is liable for all damages caused directly and indirectly by the defect, including consequential damages, which are incurred by DFE and/or a third party, and indemnifies DFE against claims for damages by third parties, unless it proves that it is not responsible for the defect. This also applies to damages in the case of complaints under food and feed law that are raised by official authorities against DFE or the customer of DFE, who brings the contractual object or a product made from it into circulation, due to a defect in the goods. The damages to be compensated include, in particular, costs from return handling, relabelling, product destruction, legal prosecution, legal defence, etc. Further legal claims remain unaffected.

## **11. Infringement of proprietary rights, product liability**

11.1 The Contractor warrants that no patents or other industrial property rights of third parties in Germany or abroad are infringed by its delivery/service and its exploitation. Insofar as the delivery/service performed by the Contractor infringes the industrial property rights of third parties, the Contractor indemnifies DFE from claims of the legal owners, unless it proves that it is not responsible for the infringement.

11.2 The Contractor is obliged to indemnify DFE against claims for damages by third parties from product liability, which are based on a defect in the product supplied by the Contractor which is within the Contractor's sphere of control and organisation and for which the Contractor is liable vis-à-vis the third party. The Contractor is also liable for expenses incurred by DFE in such a case due to public warnings or recall campaigns.

11.3 The Contractor undertakes to maintain appropriate product liability insurance for the duration of this contract, but at least until the respective expiry of the warranty period for the delivery/service. At the request of DFE, the contractor must prove the existence of the insurance. If DFE is entitled to further claims for damages, these remain unaffected.

## **12. DFE's right of property**

All drawings, samples, models and documents provided to the Contractor for the execution of orders shall remain property of DFE and may only be disclosed to third parties if express consent has been granted. Products produced on the basis of these documents may only be supplied to DFE and not to third parties. The Contractor shall not be entitled to use requests from DFE, orders and pertaining correspondence for the purpose of advertisement.

## **13. Arbitration, place of jurisdiction, applicable law**

13.1 The contractual relationships are exclusively subject to German law. The application of the uniform UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

13.2 Subject to the provision under clause 13.3, all disputes arising from and in connection with the contract shall be finally settled by the Arbitration Court of the Mannheim Commodity Exchange, E4, 12-16, D-68063 Mannheim, Germany, in accordance with the Arbitration Rules of the Südwestdeutsche Warenbörse e.V., excluding the ordinary courts of law.

13.3 In deviation from clause 13.2, if the Contractor is a merchant, a legal entity under public law or a special fund under public law, DFE is optionally entitled to bring an action before the ordinary court instead of bringing an action for arbitration. In this case, the exclusive place of jurisdiction shall be Darmstadt. In the case of legal action by DFE before the ordinary court, the arbitration agreement does not prevent the assertion of counterclaims of the Contractor by way of set-off or counterclaim within the framework of these proceedings.

## **14. Severability clause**

If one of the aforementioned clauses is ineffective, the rest of the contract remains unaffected. In the place of the invalid provision, the corresponding statutory provisions shall apply.

## **15. Data processing / Declaration of agreement**

The Contractor's data required for the execution of the contract are stored and processed centrally at DFE in compliance with all applicable data protection regulations. The contractor expressly agrees to this.