

Purchasing terms and conditions of Klüh Service Management GmbH (as of 03/2024)

1. Scope

These purchasing terms and conditions shall apply for Klüh Service Management GmbH (hereinafter referred to as Klüh) and its affiliated companies, irrespective of the size of the interest, with all associated operations and properties.

Our purchasing terms and conditions shall apply exclusively. We shall not accept any conflicting terms and conditions of the supplier or terms and conditions which deviate from our purchasing terms and conditions unless we expressly consent to their application in writing. Our purchasing terms and conditions shall also apply if we accept delivery from the supplier in full awareness of conflicting terms and conditions of the supplier or terms and conditions which deviate from our purchasing terms and conditions.

Our purchasing terms and conditions shall also apply to all future transactions with the supplier. All agreements with the supplier (e.g. orders, amendments, additions to the supply agreement) must be concluded in writing. The written form shall also be fulfilled if the data are transferred electronically or by remote data transmission.

Other terms and conditions may apply at the international companies.

2. Orders / exchange of data

As a matter of principle, orders shall be placed by electronic data exchange – provided the necessary technical conditions are met.

Delivery notes must detail volumes, item prices and the total price. The position of the individual items on the delivery note must match their position on the order.

We may approve a deviation between delivery and order. This approval must be provided in writing. The acceptance of deliveries or delivery notes, the issue of receipts or the execution of payments shall not be deemed approval.

3. Prices and validity

The supplier shall provide the agreed core range at the agreed prices plus applicable value added tax. The prices shall include packaging and transport insurance. The prices at the time of delivery shall be relevant.

Price increases and their validity must be notified to Klüh's procurement department with appropriate notice of at least eight weeks and will only become effective with the express written consent of the procurement department. Price reductions shall be notified by the supplier to the procurement department without undue delay and implemented after agreement.

The validity of fixed prices and the uniform calculation of deposits shall apply to the supplier's entire delivery area.

4. Delivery

Deliveries shall be effected DPP (Incoterms 2020) to the respective Klüh recipient.

Unless otherwise expressly agreed in writing, the delivery shall only be deemed to have been effected when the properly packaged goods have been handed over to one of our employees or representatives inside the first lockable door to an area managed by Klüh. The supplier shall obtain a receipt from us when the goods are handed over.

The goods may not be unloaded without a handover; this would entitle us to refuse to accept the goods. Delivery by truck is only permissible if the location allows secure direct access. Prior to delivery, the supplier must clarify this with the ordering party.

Unless otherwise agreed in writing, no minimum purchase quantity has been defined by the recipients. It shall also not be deemed to exist as the result of customary practice or other circumstances such as the attainment of a certain value or volume.

For the delivery of goods that must be refrigerated, the maximum temperatures of +2°C/+7°C shall apply, depending on the product group; the maximum core temperature for frozen goods shall be -18°C.

The supplier shall bear the transport risk of all deliveries.

If one of the items ordered is not available at the time of delivery, the recipient shall be informed without undue delay. If necessary, the delivery shall be effected at a later time. If the recipient does not accept this, the supplier shall ensure a replacement item of equivalent quality and at a price no higher than that of the item that was originally ordered. The supplier may only deliver a more expensive item with the approval of the recipient.

The supplier shall inform us about new and/or improved products without undue delay after their inclusion in its range and shall inform Klüh's procurement department and the recipients without undue delay about planned and ongoing special campaigns such as promotions or special offers.

5. Delivery dates, delays

The agreed delivery dates shall be binding. The products ordered shall be delivered to the location specified in the order unless otherwise agreed in writing.

Unless otherwise specified in the order, deliveries will only be accepted during our normal business hours.

Compliance with the delivery date or delivery deadline shall be determined by the receipt of the goods at the specified location.

If the supplier can see that it will not be able to deliver on the agreed date, irrespective of the reasons for this, the supplier shall notify us of this in writing without undue delay, stating the reasons and the likely duration of the delay. Advance oral notification of the delay must be confirmed in writing.

If the supplier culpably omits to provide us with written notification that a punctual delivery is likely to be impossible, the supplier shall be liable to us for any damages we incur as a result. This shall not affect our right to assert further claims for compensation.

We shall be entitled to assert statutory claims in respect of the delivery delay.

6. Invoicing, payment terms

Following delivery, the invoice shall be issued to the ordering party without undue delay and include the specified invoice text, unless otherwise agreed. The invoice text must be visible on each page of the invoice.

The invoice shall be settled via defined bank accounts. It must be possible for the recipient to easily match delivery notes to invoices.

Unless otherwise agreed in writing, the invoice shall be settled net within 30 days of delivery and receipt of a correct invoice.

The Parties shall have a statutory entitlement to set-off rights, rights of retention or a claim for non-performance of the contract. In particular, the Parties shall be entitled to retain payments that are due for as long as there are claims arising from incomplete or defective performance. The supplier shall be entitled to set-off rights or to rights of retention only in respect of legally established or undisputed counterclaims.

The supplier may assign claims against us to third parties only with our written consent.

7. Packaging / disposal / circular economy

The goods shall be packaged in such a way as to prevent transportation damage. Packaging material shall be utilised only to the extent necessary to achieve this purpose. The packaging materials used must be environmentally friendly and suitable for food-contact applications.

When delivering foodstuffs, other substances used in the manufacture of foodstuffs, packaging materials for foodstuffs and other materials which come into contact with foodstuffs during the manufacturing or packaging process, the product and transport packaging and the means of transport used must be in a hygienically perfect condition and suitable for the storage of foodstuffs. The supplier shall guarantee in particular that the product packaging is free of any kind of foreign constituents and that the migration thresholds defined in the German Consumer Goods Ordinance are not exceeded.

In compliance with the provisions of Germany's waste and packaging legislation, the supplier shall take back the packaging material used and bear the costs of its correct disposal.

In the context of its sustainability strategy, Klüh has committed to contributing to the circular economy and expects corresponding contributions from its suppliers.

8. Warranty

In the event of defects, our statutory warranty rights shall apply, unless otherwise provided. We may refuse to accept defective goods. At our request in the event of a warranty claim – notwithstanding the other warranty obligations – the supplier shall deliver a defect-free item to the affected Klüh recipient (replacement delivery). The delivery shall be effected at the same price, even if the goods were to have been procured at a higher price in the meantime. If the price were to have decreased in the meantime, the lower price shall apply. In the case of perishable goods, the supplier shall ensure the same-day delivery of the replacement after receipt of our complaint. Our right to assert claims for compensation and consequential damages for defects shall also be unaffected in the event of a replacement delivery. In the case of a replacement delivery and repair, the warranty period for replacement/improved items shall restart.

If the supplier fails to effect subsequent performance within an agreed period of grace or an appropriate period of grace we set, we may repair the defect ourselves or procure a replacement and request compensation from the supplier for the costs incurred thereby. If the supplier fails to effect subsequent performance or it is unreasonable for us to accept subsequent performance (for example, in the event of particular urgency, risk to operational safety or the imminent occurrence of disproportionate damages), there shall be no need to set a period of grace. We shall inform the supplier thereof in writing without undue delay.

We shall be obliged to inspect the goods and provide notice of defects only after delivery and the provision of a correct delivery note. In any case, we shall be deemed to have provided timely notice of evident defects if we inform the supplier within one week from the proper receipt of the goods. Refusal to accept the goods due to a defect shall be deemed notice of defects. In any case, we shall also be deemed to have provided timely notice of concealed defects if we inform the supplier within eight weeks from discovery of the defects or within one week in the case of perishable goods. The timely dispatch of the written notification shall determine compliance with the notice periods.

Goods subject to a notice of defects must be collected by the supplier at its own expense. Having submitted a notice of defects, we must store the goods in accordance with statutory requirements, to the extent that it shall be reasonable for us to do so. Storage shall be deemed unreasonable in particular if it were to result in the risk that stored goods in perfect condition might deteriorate. We shall only be liable for the deterioration or destruction of the goods subject to the notice of defects in the event of wilful intent or gross negligence, and then only if different conduct could have been reasonably expected. In any case, liability in respect of perishable goods shall be excluded at the latest after three days and in respect of other goods after eight days from submission of the notice of defects.

9. Quality requirements and quality assurance

The supplier guarantees that all deliveries/services shall be effected/provided professionally and in accordance with the state of the art, legal requirements and the rules and guidelines specified by public authorities, the employers' liability insurance association and trade bodies. Product-specific documentation shall be provided. The supplier assures that all deliveries/services may be used in Germany or – to the extent that it has been notified thereof – in the country of destination without prejudice to third-party rights and legal interests.

The supplier undertakes to comply with its traffic safety and testing obligations and to notify the ordering party without undue delay in the event of any breaches.

When delivering foodstuffs, the supplier assures us that it will comply with all applicable regulations pertaining to foodstuffs, animal feed and hygiene and with other statutory regulations. In particular, it has established and maintains a tracing system in accordance with the requirements of Regulation (EC) 178/2002 and maintains an in-house control system (HACCP) in accordance with Regulation (EC) 852/2004 on the hygiene of foodstuffs.

In respect of the delivery of foodstuffs, the supplier shall comply with the following quality criteria:

- Compliance with statutory food hygiene requirements is ensured.
- The required aspects of a HACCP concept will be implemented as binding elements of the quality assurance and in-house control system.
- All the foodstuffs to be delivered shall comply with the applicable laws and regulations on foodstuffs and consumer items. Compliance with the applicable statutory requirements and quality standards must be ensured across the value chain. Compliance with the applicable EU regulations must be ensured.
- The statutory requirements for the verification of all declarable substances and allergens (database in accordance with Germany's Food Information Regulation [LMIV]) are complied with; the most recent version of the corresponding overview of all affected products and their ingredients shall always be provided to Klüh unprompted.
- The supplier assures that it and its sub-suppliers implement the ILO guidelines as binding. If the supplier has its own code of ethics, these shall be provided to Klüh.
- In terms of range discipline, deliveries shall be made only from the current range.
- Unique description of goods and uniform allocation of article numbers.
- Business liability insurance with cover in line with the risk situation. The supplier shall notify Klüh unprompted and without undue delay of any reduction in cover or termination of the insurance.
- If necessary, product specifications and product analyses shall be provided for all the articles to be delivered.
- The foodstuff analyses must be verified by a state-authorized food expert.
- If necessary, the EU certificate of approval for the production facility must be presented. (See 13)
- The supplier assures that the labelling and packaging of the products shall comply with all laws and other statutory requirements. In particular, the supplier shall affix to the products all written instructions, information and warnings in respect of the products that are necessary to ensure their safe use or are required by us in order to comply with all applicable statutory and other requirements.

In the event of a product recall, the supplier shall ensure that our quality assurance team receives a full overview of the Klüh recipients affected and facility-specific statistics concerning article volumes within 24 hours. In addition to the exact article description, these statistics shall also contain information about the delivery date/time, the use-by dates, the number of articles delivered and the batch numbers. The supplier shall actively inform the Klüh recipients about the progress of the recall.

The supplier shall provide Klüh with the available QM documents and certificates and shall resend these unprompted in the event of updating/extension.

If necessary, the supplier may be audited. Klüh may delegate the conduct of the audit.

10. Retention of title

Upon full payment of the purchase price, the delivered goods (reserved goods) shall become our property. However, we may use the reserved goods and sell them on in the normal course of business, provided we are not in default of payment. However, we may not pledge the reserved goods nor assign them by way of security.

By way of security, we hereby already assign to the supplier any claims for payment against our customers from the resale of the reserved goods and any claims in respect of the reserved goods that arise against our customers or third parties for any other legal reason (especially claims arising from tort and insurance claims). The supplier shall accept this assignment. We may collect these claims assigned to the supplier in our own name but on the supplier's account and on behalf of the supplier. The supplier will not assert the claims itself and will not revoke the direct debit authorisation as long as we correctly fulfil our payment obligations. We may process the reserved goods. The supplier assures that no third-party rights (for example, retention of title or liens) exist and thus exempts us from all third-party claims.

11. Sustainability, business ethics (Supply Chain Act)

The supplier shall comply with all internationally recognised environmental, labour and social standards such as the BSCI (Business Social Compliance Initiative) code of conduct. The current BSCI code of conduct can be found at <https://www.amfori.org/content/amfori-bsci>.

Also applicable:

- Children deserve the special protection of all economic operators. Over and above the ILO recommendations and thus also the BSCI standards, a minimum age of 15 shall apply across the board. Exemptions for developing economies and/or light child labour will not be accepted.
- The supplier shall also require its sub-suppliers to comply with these standards and ensure that suitable records are kept to verify ages and thus effectively prevent child labour. Klüh shall also be informed about any indication of child labour anywhere in the supply chain.
- Klüh shall be notified immediately in the event of severe pollution (i.e. with negative and hard-to-remedy effects on the environment just outside the company's premises) at the premises of the supplier or its sub-suppliers, especially emissions to the air, noise emissions to the environment, waste water disposal and soil contamination.

- The supplier undertakes to exercise its duty of care in accordance with Germany's Supply Chain Act and can provide the corresponding documentation on demand.
- If it is impacted by the Supply Chain Act, the supplier shall compile a declaration of principle, risk analysis, prevention and corrective measures and a complaints management system.
- The supplier shall also compile operational emergency plans and comply with all statutory fire prevention requirements. Klüh reserves the right to conduct supplier audits in order to ensure compliance with these important requirements.
- The supplier undertakes to act in accordance with the requirements of Regulation EU 2023/1115 on deforestation-free agriculture when placing on the market, making available and exporting the following goods: Cattle, cocoa, coffee, palm oil and some palm oil products, rubber, soya or wood (relevant raw materials according to Annex I of the regulation).
This serves to preserve biodiversity and reduce greenhouse gas emissions.

To this end, the supplier shall provide the necessary information, give access to the relevant documents and allow inspection of the production facilities. Klüh may conduct the audit at usual business hours or engage a third party bound by a secrecy agreement to conduct the audit on its behalf. Klüh will ensure that its on-site activities cause the least possible disruption to the supplier's business operations. The supplier acknowledges that providing access and allowing inspection does not entail any responsibility for control, participation or auditing on the part of Klüh.

We have defined our values in a binding Code of Conduct which you can find at www.klueh.de.

12. Confidentiality

Both Parties shall maintain secrecy in respect of confidential negotiations, prices, delivery volumes and other agreements. This shall also include all discussions prior to concluding a supply agreement, irrespective of whether a business relationship with Klüh is established.

If necessary, the supplier may only provide the recipients with information about the prices; all other information concerning discounts or other payments is the preserve of Klüh's procurement department. If recipients request other information, the supplier shall refer them to Klüh's procurement department.

This duty of confidentiality shall also apply to all employees and other people who work at the premises of both Parties.

The supplier shall maintain secrecy in respect of all confidential processes of which it gains knowledge in the course of its transactions with Klüh recipients.

In the event of any breach of both aforementioned points, Klüh shall reserve the right of immediate extraordinary termination.

The duty of confidentiality shall continue without restriction upon termination of the business relationship.

13. Product liability and insurance

As a matter of principle, the Parties' liability shall be governed by statutory requirements, unless otherwise agreed.

In the event of claims arising from death, personal injury or harm to health, we shall be liable only for negligent or intentional breaches of duty. For all other claims, we shall be liable only for grossly negligent or intentional breaches of duty. This shall exclude liability arising from the provisions of Germany's Product Liability Act (ProdHaftG). In accordance with general statutory requirements, we shall also be liable in the event of fraudulent intent or the assumption of a warranty.

We shall only be liable for simple negligence if this results in a breach of key contractual obligations (cardinal obligations) which must be fulfilled for the proper performance of the contract and compliance with which can be reasonably expected by customers. Liability is restricted to foreseeable damages that are typical of the contract. This shall apply mutatis mutandis to breaches of duty by company officers, representatives, employees or other vicarious agents.

To the extent that claims for damages are made against us in respect of third parties, the supplier shall exempt us from third-party claims for damages on first demand and shall take all necessary measures because the causes are rooted in its own area of competence and organisation and the supplier shall be liable in respect of third parties. This shall apply especially if the supplier is culpably responsible for breaching third-party property rights and these third parties seek to assert claims against us for the breach of these property rights.

The Parties will notify each other in writing and without undue delay if claims are to be asserted against one of them for a breach of property rights. Regarding the possible joint and several product and manufacturer's liability towards third parties, the supplier shall be liable to its partners for all design, manufacturing and instruction errors. In the context of the manufacturer's liability, the supplier alone shall be responsible for product monitoring obligations; we shall notify the supplier accordingly should we become aware of a product defect.

In this respect, the supplier shall also reimburse any expenses in accordance with sections 683 and 670 of the German Civil Code (BGB) or in accordance with sections 830, 840 and 426 BGB which are incurred as a result of or in connection with a product recall executed by us. To the extent possible and reasonable, the supplier shall be informed about the content and scope of the product recall measures and given the opportunity to state its position. The limitation period for these claims is 36 months from the time that the risk is transferred. In accordance with the provisions of Germany's Product Safety Act (ProdSG), we shall provide the necessary information to the relevant public authorities in consultation with the supplier.

In this respect, we are not entitled to conclude any agreements, especially settlements, with third parties without the supplier's consent.

The supplier undertakes to maintain product liability insurance with appropriate cover – at least EUR 2.5 million per person/claim – which covers all product liability risks, including the risk of product recall. Upon request, the supplier shall provide the corresponding insurance certificate. This shall not affect our right to assert further claims for compensation.

14. Force majeure

In the event of force majeure, the party affected shall be exempt from its respective obligations to deliver or accept goods for the duration and scope of the impact arising from the breach. Klüh shall not be obliged to accept or pay the supplier for the subsequent delivery of goods that were initially not available as the result of force majeure. Supply difficulties and disruption to service on the part of the seller's sub-suppliers shall only be deemed to be force majeure if the sub-supplier is prevented from providing the contractual service due to force majeure.

The affected party shall inform the other party without undue delay but at the latest within 24 hours of becoming aware of the occurrence or termination of force majeure and shall endeavour to resolve the force majeure and to restrict its impact as far as possible.

In the event of force majeure occurring, the parties shall agree the further procedure. This shall not affect the right of each party to terminate the agreement for cause should the force majeure continue for a prolonged period.

Force majeure is an exceptional and inevitable external event that cannot be avoided, despite the exercise of the utmost diligence.

15. Data protection

The supplier shall take all necessary and/or expedient measures to ensure compliance with data protection requirements, especially the General Data Protection Regulation. The supplier shall inform us without undue delay if it becomes aware of us having breached data protection regulations in the course of our contractual relationship.

Klüh shall be notified proactively and in a timely manner about any IT security issues that impact Klüh.

16. Place of performance and jurisdiction

Unless otherwise agreed, the place of performance for the delivery obligations shall be the location for the receipt of the goods specified in the order.

The exclusive place of jurisdiction shall be Düsseldorf. We are also entitled to take legal action against the supplier in any other permissible jurisdiction.

17. Severability clause

If a provision of this agreement should become invalid, this shall not affect the validity of the agreement as a whole. The Parties shall then agree another provision that most closely reflects the purpose and economic intent of the invalid provision.