



General Terms and Conditions of Purchase (05/10)



Valid as of: 01/05/2010

1. Orders

Orders are only placed with authorised suppliers. Authorised suppliers are regularly monitored and assessed in terms of risks. Orders shall be binding on us only where we have issued these in writing and they are signed by two duly authorised members of staff. Volume orders will generally be deemed to be blanket orders without purchase obligation on our part. Accordingly, purchase quantities for the term of the contracts are estimates rather than exact specifications. Binding specifications of the quantity shall be made separately with each call. The DEK order and product number must be cited on all correspondence arising from any orders that we have placed.

Unless otherwise agreed in writing with the order, all orders are subject to our purchase order conditions (e.g. in relation to specification and DEK guidelines). The contractor's sales and delivery terms do not form any part of the order. This shall apply even if we have raised no objection to any of the contractor's sales and delivery terms sent to us, and these contradict our own purchase order conditions.

In order to be valid, any additions or amendments to the contract require our written confirmation.

If the contractor's order confirmation deviates in any way from our order, the contractor must specifically draw this to our attention. Should the contractor not do so, any lack of comment on our part may not be interpreted as tacit consent.

2. Supply Capability

The purchaser shall send a requirement plan to the contractor every 14 days by **EDI** including a requirement prognosis for the following six months. The contractor undertakes to produce the quantities of contract products required by the purchaser and make them available and/or deliver them on the agreed dates to the purchaser or other companies designated by the purchaser. The electronic transmission of the quantity requirements is subject to the **EDI Agreement**.

In order to optimise the technical and planning processes, the contractor, on the basis of the required quantities, shall determine in co-ordination with the purchaser the size of each batch, taking into account the annual requirements, storage time and technological requirements and necessities. The contractor shall provide the purchaser with a weekly report regarding the current stocks, planned production dates and expected quantities.

The production and packaging of the contract products must be carried out exclusively in production sites which have been jointly designated by the parties.

The contractor shall notify the purchaser immediately in case, for whatever reason, he does not have the capacity to produce the quantities as planned by the purchaser in the designated production site.

In such a case the contractor shall move production to a different site, in order to ensure the continuing supply capability to the purchaser. However, the assignment of production to production sites other than the ones designated or to third parties is subject to the written consent of the purchaser. Any production in unauthorised sites or production by subcontractors or third-party producers is explicitly prohibited.

In case of external production the contractor shall transfer all his contractual obligations to the third party.

In order to ensure his continuous supply capability, the contractor shall keep in stock the equivalent of two monthly supplies of each product, based on the figures specified in the requirement plan which is effective at the time.

3. Quality and Traceability

All specifications must be kept up to date and conform to the legal regulations at all times. Specifications are made on end products, raw materials, ingredients, additives, flavours and packaging materials. Any products to be supplied must conform to the agreed specifications which form the basis of the Quality Assurance Agreement. All quality test criteria of the contractor must be implemented in the production process as required by the specifications. Any **allergens** as defined in Directive 2000/13/EC and all modifications based thereon must be listed in the specifications for raw materials and finished products. Any cross-contamination during the production of products containing allergens must be prevented. The contractor must provide **declarations of conformity** for all primary packaging, including containers, conveyer belts etc. which come into contact with raw materials or semi-finished goods. Our suppliers are under an obligation to ensure the **traceability** (Articles 17, 28 of Regulation (EC) No. 1935/2004) of raw materials, primary packaging and other packaging materials that come into contact with food.

4. Delivery Dates

In order to ensure smooth delivery of the products, it is indispensable that we receive the products on the agreed date.

Since our companies, as specified in the IFS Certification, must be in a position to trace batches right to the primary packaging material, it is indispensable that we are notified of the dispatch of any pallets electronically by DESADV (Despatch Advice Message).

a) The delivery of the first series of each contract product is subject to the prior inspection by the purchaser and his approval. The delivery of all subsequent series is subject to the agreed conditions and specifications of delivery.

b) If the delivery and/or service is not provided either in whole or in part by the agreed date, this shall entitle us, at our discretion, either to cancel the contract or to demand compensation for late / non-delivery or late / non-provision of the service.

We shall also be entitled, should the contractor provide only a part delivery or only partially render the service by the agreed date, to exercise the aforementioned rights solely in respect of the still outstanding part of the delivery or service to be rendered.

c) Should the contractor become aware that it will not be able to meet an agreed date, he must inform us of this immediately and offer us a new delivery date. We reserve the right to demand compensation and to cancel the contract should the new delivery date offered not be acceptable to us.

d) In the event of late delivery and/or provision of service, our right to claim compensation for any losses thus incurred shall at all times remain unaffected.

5. Shipping and Acceptance

The costs and risk of all shipments are borne by the contractor. Risk does not pass from the contractor until the recipient has taken delivery of the goods. The pallet arrangement specified in the order/specifications must be strictly observed.

If other recipients or delivery addresses were specified in the order, the risk shall pass to us only upon direct receipt and acceptance of the goods by the specified recipient.

In making the shipment the contractor warrants that the goods it is supplying conform to prevailing regulations in the Federal Republic of Germany in respect of technical, safety and food legislation compliance, health and safety at work, accident prevention and emission controls.

Any variations in the quantities supplied require our specific approval. Unless previously agreed, we shall not be obliged to accept any deliveries of additional goods and/or provision of additional services, nor any part deliveries and/or partial provision of any services. We shall similarly not be obliged to accept any defective or incorrect goods.

At the time of delivery we must be provided with all necessary documents for acceptance of the goods. The DEK order number, stock number and our hours for acceptance of goods are to be clearly displayed on all delivery documents.

The packaging needed for shipping the goods is either to be taken back by the contractor or disposed of by the purchaser on the contractor's behalf. The cost shall be borne by the contractor.

6. Invoices and Payment

All order prices are firm and apply in each case in the currency specified in the order.

Invoices are not to be included in the shipment. A separate invoice is to be issued for each order, quoting the order number. In addition, the delivery date must be indicated in all invoices and, where applicable, the value added tax applicable in the Federal Republic of Germany must be specified separately. The discount to total invoice value is, however, to be applied first. Unless otherwise agreed, after receipt of the goods and the invoice, payment less a 3% discount will be made within 14 days or net within 45 days. In cases where printed invoices are not required (equal treatment of printed and electronic invoices in accordance with the German Value Added Tax Act or UStG), a written agreement between the parties will be required prior to electronic data transmission as part of the EDI process (message type: INVOIC). We shall at all times be entitled to offset or withhold payment where any of our own invoices are due for payment by the contractor, even if such invoices are in dispute.

7. Warranty and Liability

The contractor guarantees that the delivery and/or service shall be as per contract and of the contractually agreed quality.

The contractor shall be liable in particular for the goods delivered and/or service provided being to the guaranteed specification / to the specification tacitly assumed from the contract. Any deficiencies (including in respect of part deliveries and/or partial provision of services) shall entitle us to demand that the contractor remedy the problem or reimburse us for our own costs and expenses.

Should the contractor not comply promptly with our request to remedy the problem, we shall be entitled to have it remedied at the contractor's cost and to make the contractor liable for all attendant and subsequently incurred losses.

We are also entitled, at our discretion, either to have the order fulfilled as per the contract, or to cancel it, to decline to have any further contractual work done, or to demand compensation.

The contractor also specifically guarantees that where deliveries or services are provided based on drawings or samples, these shall correspond fully to said drawings or samples.

All drawings, samples or other masters and templates, such as models, tools, slides, finished artwork, etc., supplied to the contractor for the purpose of fulfilling the order remain our property and may not be made accessible to third parties without our prior consent.

Deviations of any kind – including in relation to part deliveries and/or partial provision of services – shall entitle us, at our discretion, to cancel the contract, merely to refuse to carry on with the contract or to demand compensation.

Where packaging materials carry a barcode, the printers must ensure and provide evidence that the quality of the barcode is at least level B(3) as per CEN/ANSI DIN EN 1635. It must also be compliant with DIN EN 797.

In the case of bulk goods, we require the use of a metal detector.

For as long as any warranty or compensation claims made by us have not been settled, dealt with by some other means or determined by legal judgement, the contractor shall not invoke in its defence the expiry of the due period for warranty or compensation claims against it.

The contractor shall be liable for all consequences resulting from defective contract goods as stipulated under the law and shall indemnify the purchaser from any related claims by third parties.

The contractor confirms that he has taken out product liability insurance cover to a minimum amount of . 2 million for damage to property, personal injury and pecuniary losses and undertakes to maintain at least this minimum cover for the duration of the contractual relationship. Upon request, the contractor shall provide the purchaser with a corresponding confirmation of insurance cover.

In case of inadequate quality of a delivery, non-delivery or other deficiencies, the purchaser shall be entitled to compensatory damages or compensation under the warranty.

The contractor shall be liable in case he uses components or packaging material with obvious defects without the express consent of the purchaser.

The contractor shall not be liable for any hidden defects which, despite the agreed inspection procedures, could not be detected.

8. Force Majeure

Neither the contractor nor the purchaser shall be liable to the other party for losses, costs, damage or expenditure incurred due to delays in or defaults on the performance of contractual obligations by the contractual parties as a result of war, war-like activities or hostilities, public uprisings or riots, earthquakes, storms, floods or other natural disasters, accidents, boycotts or actions or decisions by government authorities.

It must be stressed that strikes or other labour disputes, blockades or a temporary suspension of transport or a shortage of base or packaging materials or a breakdown of production facilities shall not be deemed as force majeure. Each contractual party is under an obligation to inform the other party immediately in case such difficulties are impending.

In case the performance of the contract on the part of the contractor is disrupted due to force majeure, he shall endeavour to limit as much as possible the duration and consequences of such disruption (see also point 2).

9. Genetic procedures

a) In accepting the order, the contractor is giving an assurance that the products to be delivered neither consist of nor contain any genetically modified organisms (as defined in Article 3 of the Genetic Engineering Act). Neither the use of genetic engineering facilities or procedures nor substances derived from genetically modified organisms is permitted in the production, making and/or breeding of such products. This applies in the same measure to ingredients and, in the case of composite ingredients, both to these and also to the ingredient's primary and starting products and to any agents used in making said products and ingredients.

Therefore the products to be supplied do not fall within the scope of Regulation (EC) No. 1829/2003 and are not subject to the labelling requirement stipulated in Regulation (EC) No. 1830/2003.

b) The contractor shall inform all of its suppliers, from whom products, ingredients or agents are obtained, of the need to adhere to the obligation it has itself agreed to at clause 'a' and shall pass this obligation on to them as a compulsory requirement.

c) The contractor undertakes to adhere to the provisions pertaining to clauses 'a' and 'b' above. No deviation from this is permitted without our written approval in each individual case.

d) In respect of products, ingredients and the primary and starting products of ingredients and agents obtained from suppliers the contractor shall be liable only if and to such extent that the possibility existed for the contractor to ascertain by reasonable means whether these had been genetically produced, processed and/or modified.

10. Expiry of claims

The contracting parties agree that the rights of the party issuing the order to make any warranty claim shall not expire until 12 months after acceptance of the goods.

If any goods subject to a complaint are repaired or replaced by the contractor, then the valid claim period shall start again from the point at which the work to remedy the fault or provide the replacement is completed and shall run from that date for 12 months.

11. Notification of defects

Formal acceptance of goods cannot take place until we have had the opportunity to examine and check the item(s) concerned. The examination and checking process takes place as part of our general business procedures / goods-in checks. In the case of machines, the examination can generally not be performed until the machines have been run at full load. Regardless of when faults are discovered, complaints about them shall be deemed made within the appropriate time if lodged within 4 weeks of receipt of the delivery or provision of service, otherwise within 2 weeks of discovering the fault. No deadlines for tests or inspections to oppose such complaints will be applied.

Any payments made do not mean that we are waiving our right of complaint. We may, at our discretion, have deliveries about which we have complained sent back to the supplying company, or if they are not taken back by a deadline set for this to be done, store such deliveries at said company's expense and risk.

12. Defects of title, assignment of rights

All deliveries must be made free of third party rights. We do not accept indications of such rights, retentions of title in favour of third parties or similar on invoices, delivery notes, confirmation slips, etc.

Any and all assignment of contractual rights or passing on of contractual obligations requires our prior written consent.

13. Cessation of payments, creditor arrangements and/or insolvency

Should it become known that the supplying company is having difficulty making due payments, has ceased or is in the process of ceasing to make such payments, or that the supplying company is seeking an out of court arrangement with its creditors or is going to have to apply for insolvency, then we shall be entitled to issue a statutory written declaration and cancel the agreement or terminate it in full or in part with immediate effect, whereby any claims against us in this connection shall be excluded.

Should we be forced to terminate an agreement, the contractually agreed prices for services and deliveries already performed will only be paid if we are able to use them as originally intended. Any damage or loss shall be taken into account in the final settlement.

This shall also apply if proceedings are initiated for voluntary or compulsory liquidation.

14. Miscellaneous

The products to be supplied by the contractor must conform to the latest version of the agreed specifications which is also the basis of the Quality Assurance Agreement. All inspection criteria must be implemented by the contractor in the production process in accordance with the requirements defined in the specifications.

In 2006 EU Regulation (EC) 1935/2004 shall take effect. Section 17 stipulates the traceability of materials which are used when processing food. According to Section 28, Section 17 shall be binding on our suppliers as per 27/10/2006.

a) Any and all items provided to the contractor are to be returned to us automatically after the order has been fulfilled. We retain without limitation all rights to title and copyright. The contractor also undertakes to keep confidential all information obtained from our work together.

b) The Parties undertake to keep confidential any knowledge, in particular pertaining to market data, product developments and characteristics of products as well as customer contacts, gained as part of their co-operation.

In addition, such knowledge must not be used for own business purposes or divulged to third parties, even after performance of the contract. The parties shall ensure that all staff members to whom such knowledge is imparted are obliged to confidentiality.

c) If certificates, test reports, proof of origin documents or the like are supplied by the contractor with the delivery, then the details given therein shall be deemed warranted characteristics. Should as a result of these the customs authorities demand different classifications when the goods are imported, then any and all additional costs that may arise shall be borne by the contractor.

d) The contractor is responsible for adhering to statutory regulations. The contractor warrants that the items ordered are suitable for import as per the Foreign Trade and Payments Act.

e) The contractor is responsible for carrying out the jointly co-ordinated quality checks. The purchaser or third parties instructed by him to do so shall only carry out quality checks and inspections of incoming deliveries on a random basis. Should inspections take place at the supplying company's premises, we shall not automatically accept that the item is of the contractually specified quality. We shall still have the right at a later stage to raise complaints about any goods delivered in a faulty state.

f) Delivery of contract products, which do not conform with our terms of acceptance or specifications, is subject to the written approval of the recipient. In case the recipient rejects products on the grounds of defective quality, the contractor shall be under an obligation to take back the defective products and replace them in due time. Exceptions may be made following consultation between the relevant departments of both parties. Any costs incurred by the purchaser in connection with such exceptions shall be borne by the contractor.

g) Within the framework of our supplier auditing work, we are to be granted access at any time to the warehousing and production facilities and to be given all necessary information. Steps will be taken here to ensure that this does not relate to operational or business secrets. It is furthermore deemed agreed that all information gleaned is intended solely for our own use and that strict confidentiality in relation to third parties is assured.

h) If so requested, the contractor must supply an appropriate manufacturer's declaration that warrants the evidence for ensuring conformity.

15. Special guidelines for providing services

a) The start and execution of all jobs to be done within the perimeter of our premises must be coordinated with the member of our staff responsible for this in each instance.

b) Where work is done on the basis of an hourly rate, we shall be entitled to hand out worksheets to the member of the contractor's staff charged with such task (e.g. fitter, etc.), on which the hours worked are to be recorded each day. Each day, the worksheets must be presented for signing off to the member of our staff responsible for so doing. Copies of the worksheets are to be enclosed with the invoice as a record of the work done.

c) If the need arises for extra work to be done that was not covered in our written order or that is not covered by the scope of the works mentioned therein, then for this too the issue of a written order from us is required. Failing this, payment cannot be demanded for such work.

d) We also draw contractors' particular attention to pages 1 to 7 of our separate DEK guidelines for work done by third-party companies on plant facilities, machines, buildings, and other equipment. These are available to contractors on request. The same applies to our visitors' registration regarding hygiene requirements.

e) All work done is to be itemised on the final invoice by wages, materials, and third-party external services.

f) The contractor shall warrant that at the time of formal acceptance the work done matches all of the points in the order, has the contractually warranted characteristics, complies with all recognised technical and trade regulations, was carried out in accordance with all of the relevant provisions of statutory authorities, trade bodies and industry associations, and does not have any defects that could negate or diminish its value or its suitability for normal use or for the use specified in the contract. The contractor shall, in particular, be liable for the suitability of its proposed construction, for the correct and most economical calculation of costs, for the use of the best and most appropriate materials and for the professional execution of all work. The contractor undertakes to replace any items damaged as a result of his work and to indemnify us from any compensation claims from third parties that may arise from any damage to property or personal injury.

g) The contractor's vehicles may only drive onto our company grounds to deliver materials and tools.

16. Place of execution and jurisdiction

The place of execution for both parties shall be Hamburg. Insofar as the contractual partner is a sole trader, a corporate entity or has no place of general jurisdiction within Germany, then jurisdiction shall lie with courts of Hamburg.

The contracting parties agree that this order shall be governed by the laws of the Federal Republic of Germany.

The provisions of the Hague Uniform Law of International Sales (ULIS) and the United Nations Convention on Contracts and the International Sale of Goods (UN trading laws) shall not apply to this contract.

17. Severability

Should any individual provisions of the contract or of the General Terms and Conditions of Purchase be wholly or partially invalid, the remaining provisions shall still remain fully valid. Both parties agree to replace the invalid provision with a valid one, with the new provision approximating the commercial intent of the invalid provision.

Please let it be known to you that we shall store data relevant to the processing of business incidents.



DEUTSCHE EXTRAKT KAFFEE GMBH
CAFEASTRASSE 1 • D-21107 HAMBURG



P.O. Box: 93 02 69 • 21082 Hamburg
Telefon: +49 (0) 40 / 75 304-0
Telefax: +49 (0) 40 / 75101-100
e-mail: DEK@dek.de
internet: www.dek.de

Legal form:
Gesellschaft mit
beschränkter Haftung
VAT No.: DE118539824
ILN: 4009041000006

Registered offices:
Hamburg
Registry court:
District Court of Hamburg
Commercial Register No. B7795

Managing Directors:
Jan Beernd Rothfos
Holger Bebensee (chairman)
Sven Dahler
Bernd Steeger

Bank Account::
Deutsche Bank, Hamburg
IBAN DE92 2007 0000 0600 1002 00
A/C No.: 6001002
Sort code 200 700 00