

**General Terms of Purchase for  
Raw Materials and Packaging –  
Heinrich Kühlmann GmbH & Co. KG**

**§ 1  
Area of validity**

1. Heinrich Kühlmann GmbH & Co. KG procures goods exclusively under these Terms of Purchase in their latest version. Contradictory, supplementary or deviating regulations only apply if Heinrich Kühlmann GmbH & Co. KG expressly says so in writing. These Terms of Purchase even apply if Heinrich Kühlmann GmbH & Co. KG accepts a supplier's delivery unconditionally, while being aware of the supplier's contradictory or deviating terms.
2. These Terms of Purchase apply also to any future deliveries, services or offers made to Heinrich Kühlmann GmbH & Co. KG, even if they are not agreed upon once again specially.
3. These Terms of Purchase apply only to businesses.

**§ 2  
Conclusion of contract; price; payment**

1. Heinrich Kühlmann GmbH & Co. KG only issues contractual declarations in writing, by fax or by email. If we supply an offer, then we consider ourselves bound to it for one week starting from the offer date. The supplier's declaration is considered to be made in good time if we receive it in writing, by fax or by email within that period.
2. The price stated in the order is binding and shall be in euros. Unless agreed otherwise in writing, the price shall include delivery to our premises, packaging, transport costs, insurance, unloading and – in the

case of imported goods – duties, taxes and any inspection costs. The return of packaging requires a separate agreement.

3. Statutory value added tax is not included in the price.
4. Unless agreed otherwise, Heinrich Kühlmann GmbH & Co. KG shall pay net within 60 days of receiving the invoice. Payments do not constitute an acknowledgement that the goods are free of defects.
5. Heinrich Kühlmann GmbH & Co. KG shall enjoy statutory rights to offset and withhold.

### **§ 3**

#### **Quality Assurance; monitoring; duty to inform; contractual penalties**

1. Heinrich Kühlmann GmbH & Co. KG only procures raw food materials and foods whose production is governed by good manufacturing practice (GMP) and safeguarded by a certified quality assurance system – including an HACCP concept and a crisis plan. The HACCP principles must be upheld all the way from the receipt of the raw materials, through production, to the marketing of the product, in terms of monitoring microbiological, foreign-substance-related and chemical risks. To this end, documentation must be drawn up and, if requested, made available to Heinrich Kühlmann GmbH & Co. KG.
2. The supplier is obliged to provide Heinrich Kühlmann GmbH & Co. KG with the necessary evidence of this, without being asked to do so, and to name all of the relevant quality assurance contacts, including their current mobile phone numbers. Heinrich Kühlmann GmbH & Co. KG can utilise dedicated information forms for this purpose.
3. The supplier shall, at its own expense and according to a plan drawn up in conjunction with Heinrich Kühlmann GmbH & Co. KG, retain samples of the various batches of goods delivered to the supplier and for which Heinrich Kühlmann GmbH & Co. KG requests this. The supplier must preserve the retained samples for the duration of the storage periods

stated in the product specifications. Furthermore, the supplier shall draw up production and batch reports which identify the raw materials used to manufacture particular batches of goods. The supplier shall retain these for two years from delivery. Heinrich Kühlmann GmbH & Co. KG has the right to access samples, reports and logs.

4. The supplier shall organise microbiological, chemical and physical inspections of the batches of supplied goods for those products for which Heinrich Kühlmann GmbH & Co. KG requires it, according to a plan drawn up in collaboration with Heinrich Kühlmann GmbH & Co. KG, and at the supplier's expense.
5. If the kind of inspection report described in the previous paragraph suggests that a supplied item of goods may not be marketable, then the supplier shall immediately submit the relevant inspection report without being asked to do so. Heinrich Kühlmann GmbH & Co. KG can order follow-up inspections by an authority of its choice, at the supplier's expense.
6. Heinrich Kühlmann GmbH & Co. KG is entitled, at any time during normal operational and business hours, to perform inspections and quality control at the supplier's facilities and operating sites, or to have these performed on its behalf, and in doing so may test or have tested any works facilities, systems and processes which the supplier uses for preparation, production, packaging, storage and transport within the facility. This does not release the supplier from their own duty to maintain and monitor quality.
7. If the raw food materials or foods being delivered contain genetically modified organisms, then the supplier must inform Heinrich Kühlmann GmbH & Co. KG separately in advance.
8. If the raw food materials or foods being delivered contain substances categorised as allergens by Annex II of Regulation (EU) No 1169/2011 then the supplier shall inform Heinrich Kühlmann GmbH & Co. KG separately in advance. The supplier is also obliged to inform Heinrich Kühlmann GmbH & Co. KG separately in advance if the supplier has

reason to believe that the raw food materials or foods it is supplying might unintentionally contain any such substances categorised as allergens.

9. Breaches of the aforementioned duties entitle Heinrich Kühlmann GmbH & Co. KG to levy a contractual penalty upon the supplier, the amount of which may be assessed by the responsible district court. Heinrich Kühlmann GmbH & Co. KG does not have this right if the supplier was not responsible for the breach of duty.

#### **§ 4**

#### **Scope of deliveries; delivery; transfer or risk; liability for goods, containers and shop displays; packaging**

1. Goods that are ordered must be dispatched without delay in compliance with the specifications of the order. The goods must demonstrate the contractually agreed specifications and they must be suitable for the purpose for which goods of that type are generally supplied, and / or which they should evidently have under the terms of the agreement; and they must comply with food laws and other legal regulations.
2. The supplier must, without prejudice to legal regulations, ensure in every case that fresh meat, perishable meat products and other raw materials requiring refrigeration are transported and delivered at a core temperature of no more than +4°C. If a different temperature is stipulated by a product specification, or if a different temperature is required in a specific case because of the type of goods being delivered, then those temperatures are binding.
3. Without prejudice to legal regulations, the supplier must transport and store frozen goods at a maximum temperature of -22°C in every event, and the core temperature of the goods may not exceed -18°C.
4. The delivery temperature for dairy products, especially quark, may not exceed 5°C, and the delivery temperature of egg products must not exceed 4°C.



5. Heinrich Kühlmann GmbH & Co. KG must agree in advance to any change in product composition, product labelling and packaging design, otherwise Heinrich Kühlmann GmbH & Co. KG may treat modified product composition, product labelling or packaging design as a defect.
6. If the goods are original goods from their country of origin, then the supplier shall provide a guarantee of the properties of those goods. In the case of packaged goods, the supplier shall guarantee that they comply with the relevant and applicable packaging regulations, that all of the necessary labelling is present, and that the labelling properly describes the contents.
7. Delivery notes and invoices must specify the order number given in the order, otherwise Heinrich Kühlmann GmbH & Co. KG will not be obliged to accept the delivery.
8. Delivery deadlines and periods specified in the order documents are binding.
9. If the supplier realises that the delivery deadline cannot be met, then they must inform Heinrich Kühlmann GmbH & Co. KG immediately.
10. If the supplier is late in delivering goods, then Heinrich Kühlmann GmbH & Co. KG shall enjoy the full statutory rights, in particular the right to withdraw and the right to compensation. Without prejudice to additional statutory rights, Heinrich Kühlmann GmbH & Co. KG has the right to a flat-rate delay compensation of €250 plus VAT. The supplier is entitled to demonstrate that Heinrich Kühlmann GmbH & Co. KG suffered no or significantly less damages as a result of the delay.
11. The supplier is not entitled to supply partial deliveries without an express written agreement.
12. Risk and ownership shall be transferred to Heinrich Kühlmann GmbH & Co. KG once the goods have been handed over at the agreed destination. Unless agreed otherwise in writing, by fax or by email, the

supplier shall ship DDP to Rietberg (as per INCOTERMS 2000). The supplier is obliged to unload the vehicle used for delivery, or must ensure that the haulier or its assistants unload the vehicle used for transport at Heinrich Kühlmann GmbH & Co. KG

13. The supplier shall only have the right to retain title if such rights apply to Heinrich Kühlmann GmbH & Co. KG's payment obligations for goods to which the supplier retains ownership. Additional and extended rights to retain title to the detriment of Heinrich Kühlmann GmbH & Co. KG shall not be agreed upon.
14. Packaging must be without rivets, steel staples and steel wire. Goods delivered on pallets must be stacked without overhangs, pallets must be given stable protection and a waterproof wrapping which covers the entire load. Transport must be done in compliance with all of the relevant legal regulations and under clean, hygienic and physically impeccable conditions.

## **§ 5**

### **Inspecting for defects**

1. Heinrich Kühlmann GmbH & Co. KG shall check incoming goods for deviations in quality and quantity within a reasonable time period. To fulfil the duty to inspect under commercial law, it is enough to undertake a thorough visual inspection of the supplied goods and check the documents submitted by the supplier, in particular inspection reports on the batches delivered. Heinrich Kühlmann GmbH & Co. KG is not obliged to perform its own laboratory tests.
2. A notice of defects shall not be deemed late if it is submitted within five working days of receipt of goods, or of the discovery of hidden defects.
3. If random inspections reveal a reason to object to the delivered goods, then Heinrich Kühlmann GmbH & Co. KG has the right to object to the entire delivery from which the random sample was taken.

**§ 6  
Liability for defects**

1. Heinrich Kühlmann GmbH & Co. KG shall enjoy full statutory rights in the event of defects of title or quality; in any event, Heinrich Kühlmann GmbH & Co. KG can choose between rectification and the delivery of new goods.
2. If Heinrich Kühlmann GmbH & Co. KG accepts samples, then this does not constitute a renunciation of its rights relating to defects.
3. The right to compensation, in particular the right to compensation in place of the entire delivery, remains expressly reserved. Under the legal regulations, the supplier is obliged to carry the cost of any covering purchase that needs to be made.
4. Compensatable damages include costs which Heinrich Kühlmann GmbH & Co. KG has to carry because the goods are deficient under food law, and in particular costs incurred on account of goods inspections, official sampling and inspections, necessary recalls and prosecution costs that arise as a result of such defects.
5. The supplier shall be liable without limit for damages caused by a defective product, in particular by the processing of a defective product provided by the supplier, and damages caused to end-consumers on account of a defect in the delivered goods.
6. If claims are laid against Heinrich Kühlmann GmbH & Co. KG on account of goods defects for which it is not responsible, then the supplier must indemnify Heinrich Kühlmann GmbH & Co. KG against any third-party claims, including the costs of any recalls. This does not apply if the supplier can demonstrate that it is not responsible for the defects; unless, that is, the supplier is liable under a guarantee.
7. Heinrich Kühlmann GmbH & Co. KG is entitled to destroy defective goods at the supplier's expense if the supplier has agreed to remove

them but does not do so within seven days. If this happens, then the supplier has no right to claim compensation.

## **§ 7**

### **Product liability; indemnification; insurance**

1. If the supplier is responsible for product damage, then it is obliged to indemnify Heinrich Kühlmann GmbH & Co. KG upon first request against third-party compensation claims, to the extent that the cause lies within its sphere of authority and organisation, and if it itself is liable in relation to third parties.
2. As part of its liability for damages as described in Par. 1, the supplier is also obliged to refund any expenses as defined in §§ 683, 670 BGB and §§ 830, 840, 426 BGB arising from, or in conjunction, with a recall.
3. Heinrich Kühlmann GmbH & Co. KG shall inform the supplier – as far as possible and if reasonable – about the content and scope of any recall that has to be done, and shall provide the supplier with the opportunity to respond. This does not affect other statutory rights.
4. The supplier is obliged to maintain product liability insurance with lump sum cover of €10 million per incident of personal or material injury; this shall not affect any additional rights which Heinrich Kühlmann GmbH & Co. KG may have.

## **§ 8**

### **Industrial property rights**

1. The supplier guarantees that no third-party rights are violated within the Federal Republic of Germany in connection with its delivery.
2. If claims are laid against Heinrich Kühlmann GmbH & Co. KG in relation to Par. 1, then the supplier is obliged to indemnify it against such claims upon first request. Heinrich Kühlmann GmbH & Co. KG is not entitled to



enter into agreements with third parties in this regard without the supplier's approval, in particular, agreeing on a settlement.

3. This duty to indemnify extends to any expenses necessarily incurred for Heinrich Kühlmann GmbH & Co. KG as a result of or in connection with claims made by third parties.
4. The limitation period is three years from the transfer of risk.

## **§ 9 Confidentiality**

1. The supplier is obliged to keep confidential any information received from Heinrich Kühlmann GmbH & Co. KG, especially specifications, manufacturing processes, products, current research and development projects and all corporate data, unless the information is generally known or has been legally obtained from or independently produced by third parties.
2. Such information may only be used for the purposes of the agreement concluded with Heinrich Kühlmann GmbH & Co. KG. Goods that are manufactured using the confidential information provided by Heinrich Kühlmann GmbH & Co. KG may only be used for the contractually intended purpose. They may not be offered or supplied to third parties.
3. The supplier shall keep confidential any drawings, illustrations, calculations and other documents received, and only make them accessible to third parties with prior permission from Heinrich Kühlmann GmbH & Co. KG, provided the information they contain is not generally known.
4. Subcontractors and employees who come into contact with the information must be held to the same agreement by the supplier.
5. If Heinrich Kühlmann GmbH & Co. KG requires, and no later than at the end of the agreement, all of the information provided by Heinrich

Kühlmann GmbH & Co. KG, including any reproductions, must be given back immediately and in full, unless the supplier still needs this information to fulfil its contractual duties.

6. Heinrich Kühlmann GmbH & Co. KG reserves all rights to the confidential information, including copyrights, industrial property rights, patents, registered designs and so on.

## **§ 10**

### **Place of jurisdiction; applicable law**

1. The place of jurisdiction for any disputes arising in conjunction with or as a result of this agreement is the district court responsible for Heinrich Kühlmann GmbH & Co. KG's headquarters. Heinrich Kühlmann GmbH & Co. KG can prosecute the supplier in any other permissible jurisdiction.
2. Unless the order states otherwise, the place of fulfilment is Heinrich Kühlmann GmbH & Co. KG's headquarters.
3. The law of the Federal Republic of Germany applies exclusively, to the exclusion of any conflicting laws and the UN CISG.

## **§ 11**

### **Severability clause**

Should any term of this agreement be invalid, then this shall not affect the validity of the remaining terms. The agreement continues to apply and the invalid term shall be replaced by the term closest in economic outcome.