Terms and Conditions for Delivery and Payment

1. Scope

1.1 The present Terms and Conditions for Delivery and Payment shall only apply to entrepreneurs in terms of Section 14 of the German Civil Code (BGB).

1.2 We shall perform all our deliveries and services exclusively subject to the present Terms and Conditions for Delivery and Payment. We do not acknowledge conflicting, deviating or supplementary terms and conditions of the Customer, unless we have expressly agreed to their validity.

2. Quotation and order

2.1 Our quotations shall be non-binding and subject to change, unless they are expressly referred to as a binding quotation.

2.2 Our written order confirmation, which can also take place by sending an invoice with the goods, shall be authoritative for the order. If the Customer has objections to the content of the order confirmation, it must object to the order confirmation immediately. Otherwise, the contract shall come into effect in accordance with the order confirmation.

3. Prices and payment

3.1 The prices specified in the order confirmation shall be authoritative. These shall apply to the individual order, not to follow-up orders. Unless otherwise agreed, our prices shall apply ex works Werder, including normal packaging. The prices shall not include freight, insurance, customs duties and VAT.

3.2 Bills of exchange and cheques shall only be accepted on account of payment on the basis of an express agreement. Discount charges and other costs of bills of exchange and cheques must be borne by the Customer.

3.3 If our total costs for the production and delivery of the affected products (in particular raw material, energy, logistics or labour costs, as well as public charges) increase or decrease, compared to the time the price was agreed, not only temporarily and more than insignificantly – for example as a result of war-related events, embargoes, significant disruptions to energy supply, serious logistics bottlenecks, extraordinary weather or climate phenomena (e.g. El Niño, extreme droughts, floods or crop failures), or unforeseen governmental measures – either party may request that the other party enter into negotiations on an appropriate price adjustment. Upon request, the cost change may be supported by suitable documentation. If no agreement is reached within four weeks after receipt of the request for negotiation, either party may terminate the affected supply agreement, with one month's notice to the end of a calendar month. Individual orders already confirmed shall remain unaffected.

4. Offsetting and retention

The Customer may only offset claims against undisputed or legally established counterclaims. The Customer shall only be permitted to assert a right of retention if it is based on the same contractual relationship.

5. Delivery

5.1 The risk of the accidental loss and the accidental deterioration of the goods shall be transferred to the Customer upon handover, or upon the delivery of the item to the forwarding agent in the event the goods are to be shipped. Insurance shall only be taken out on the special request and at the expense of the Customer.

5.2 If we choose the shipping method, the route or the forwarding agent, we shall only be liable for gross negligence with regard to the selection.

5.3 Invoiced packaging must be paid for with the goods. Loaned packaging shall be deemed to be loaned free of charge, unless otherwise agreed. It must be returned to us free of charge and in good condition within no more than six weeks, calculated from the date of dispatch. The transport risk for sending and returning the loaned containers shall be borne by the Customer. After six weeks, we reserve the right to charge a fee for use at the usual level. Our loaned containers may not be used for other purposes. The Customer shall be liable for the correct handling of our loaned containers with the due care of a prudent businessman. The return of packaging shall take place at the risk of the Customer. It must be reported to us at the same time.

5.4 Unless otherwise agreed in writing, the delivery dates or delivery periods specified by us are always non-binding. If delivery periods are exceptionally binding, the Customer may only withdraw from the contract due to exceeding the delivery period if he has previously set us a reasonable grace period accompanied by a warning, that it will refuse goods after the date and if the delivery has not taken place within the grace period. This shall not apply if a grace period is unnecessary in accordance with Section 323 (2) BGB.

5.5 If we are in default of delivery, we shall be liable for damages caused by the delay which arise for the Customer in the event of gross negligence. In the event of simple negligence, our liability for damages caused by the delay shall be limited to compensation for every completed week of 0.5 % in each case, but no more than 5 % of the price for the part of the delivery which could not be used appropriately because of the delay. Furthermore, we shall only be liable for damages caused by the delay in the event of simple negligence from the time at which a reasonable grace period set by the Customer expired.

6. Reservation of self-delivery, force majeure

6.1 If, for reasons for which we are not responsible, we do not receive deliveries or services from our sub-suppliers for the performance of our owed deliveries or services, despite proper and sufficient coverage prior to the conclusion of the contract with the Customer in accordance with the quantity and quality from our delivery or service agreement with the Customer (congruent coverage), or if we do not receive such deliveries or services properly or in a timely manner, or if events of force majeure of a not insignificant duration (i.e. with a duration of longer than 14 calendar days) occur, we shall inform the Customer in a timely manner in writing or in text form.

In the event of obstacles of temporary duration, the delivery or performance periods shall be extended or postponed by the period of the obstacle plus a reasonable start-up period, even if the delivery periods have exceptionally been agreed as binding. We shall be entitled to withdraw from the contract in whole or in part due to the part not yet fulfilled, insofar as we have complied with our aforementioned duty to inform and have not assumed the procurement risk or a delivery guarantee.

If the delivery or service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the Customer.

Force majeure shall be deemed to include, for example, war, earthquakes, floods and other catastrophes, insofar as we are not responsible for the impediment to delivery, in each case at our premises or those of our suppliers.

Epidemics, pandemics, diseases or quarantine, strikes, lockouts, official interventions, shortages of energy and raw materials, transport bottlenecks or obstacles through no fault of our own, operational obstacles through no fault of our own – e.g. due to fire, water and machine damage – and all other obstacles which, viewed objectively, were not culpably caused by us shall be deemed equivalent to force majeure.

6.2 If, in exceptional cases, a delivery date or a delivery period has been agreed as binding, and if the agreed delivery date and the agreed delivery period are exceeded due to events pursuant to Section 6.1, the Customer shall be entitled to withdraw from the contract in respect of the part not yet performed after a reasonable grace period has expired without result. Further claims of the Customer, in particular for damages, are excluded in this case.

6.3 The above regulation pursuant to Section 6.2 shall apply accordingly if, for the reasons stated in Section 6.1, it is objectively unreasonable for the Customer to continue to hold on to the contract even without a contractual agreement on a fixed delivery date. If the impediment to deliver lasts for more than four weeks, we shall be entitled to withdraw from the contract in such cases.

7. State of limbo after the grace period

If we do not perform a service owed by us or do not perform it in accordance with the contract and the Customer has, therefore, set us a reasonable period for the service or supplementary performance, the Customer must inform us, immediately after the expiry of this period, whether it still requires the service or supplementary performance or whether it shall refuse this. If the Customer does not reply to our formal request within one week of receipt, it must be assumed that we shall still be entitled to provide the service or supplementary performance. We shall refer the Customer to this legal consequence in the formal request.

8. Examination and notification of defects

8.1 The Customer must check every delivery for completeness and damage to the packaging upon receipt. Complaints must be sent to us immediately in text form. A statement of facts from the forwarding agent must be arranged by the Customer.

8.2 The Customer shall be obliged to examine the delivered item immediately and to report recognisable defects to us immediately in text form. The obligation to conduct an examination and report defects shall also extent to deviations in quantity and identity. Concealed defects must be reported immediately after their discovery in text form.

9. Material defects and limitation period

9.1 If there is a defect for which we are responsible, we shall be entitled to provide supplementary performance by removing the defect or delivering a defect-free item at our discretion. If supplementary performance is refused by us, if it has failed or is unacceptable for the Customer, the Customer may assert the additional statutory rights. The arrangements under Section 10 of the present Terms and Conditions shall apply to claims for compensation on account of defects.

9.2 The Customer must provide us with the necessary time and opportunity to undertake all the rectifications and replacement deliveries which appear necessary; otherwise, we shall be exempt from liability for the resulting consequences. Only in urgent cases, in which there is a risk to life or limb or to avert disproportionate further damage, the Customer shall be entitled to remove the defect itself or have it removed by third parties and to request a reimbursement of the necessary expenditure from us.

9.3 Claims for defects on the part of the Customer, including claims for compensation, which are based on a defect, shall lapse within twelve months of the start of the statutory limitation period. The statutory limitation periods shall, however, apply in the case of an item which has been used for a building in accordance with its customary use and has caused the defectiveness of the latter; in the case of the recourse of the seller if the end customer is a consumer (Sections 545 a and b BGB); in the event of a fraudulent concealment of a defect by us; in the event of an assumption of a warranty by us; in the event of physical injury, loss of life or damage to health; in the event of claims under the German Product Liability Act.

9.4 We shall bear the expenditure necessary for the purpose of the examination and the supplementary performance if there really is a defect. Otherwise, the Customer must reimburse us for the costs which have arisen from the unjustified request for the rectification of a defect.

10. Compensation for damages

10.1 We shall be liable for compensation for damages, irrespective of the legal basis, in the event of wilful intent and gross negligence. In the event of simple negligence, we shall only be liable for damages arising from the infringement of essential contractual obligations (obligations whose fulfilment is only made possible by the proper execution of the contract and on the compliance with which the Customer may generally rely); in this case, our liability shall, however, be limited to compensation for the foreseeable, typically occurring damages.

10.2 The aforementioned limitation of liability shall not apply to claims arising from the German Product Liability Act, in the event of the assumption of a warranty by us and in the event of physical injury, loss of life or damage to health.

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10.3 As far as we -outside of offers, confirmation letters, product specifications and/or product sheets – make available to the public or provide to customers or third parties information and/or recommendations how to use and/or process our products, such information and/or recommendations shall – if not agreed otherwise in writing – be an independent and voluntary consulting/information free of charge, which may not be requested legally by any user, which shall be tested with regard to technical and legal issues before any usage, and which shall be subject to the limitation of liability according to § 675 II BGB (German Civil Code). Any remaining liability for damages shall be subject to Sections 10.1 and 10.2.

11. Retention of title

11.1 We shall retain title to all the goods delivered by us until all the receivables from the entire business relationship have been paid in full. The claims shall include cheque and bill of exchange receivables, as well as receivables from running accounts. If a liability arising from a bill of exchange is established for us in connection with the payment, the right of retention shall only expire when our claim arising from the bill of exchange is ruled out. Goods to which our right of retention relates shall subsequently be referred to as reserved goods.

11.2 The Customer shall be entitled to resell the reserved goods in the ordinary course of business; however, it hereby assigns to us all the receivables which are due to it from its customers or third parties on account of the resale to the amount of the invoice end amount (incl. VAT) for our receivables. If the Customer includes the receivables from a resale of the reserved goods in an existing current account relationship with its customer, the current account receivable shall be assigned to the amount of the balance; the same shall apply to the causal balance in the event of the insolvency of the Customer. The Customer is authorised to collect the receivables even after they have been assigned as long as we do not revoke this.
Our authority to collect the receivables ourselves shall remain unaffected by this; however, we undertake not to collect the receivables as long as the Customer is duly complying with its contractual obligations, and is especially not in default of payment. A transfer of security or pledging are not covered by the Customer's authority to sell the goods and are thus impermissible.

11.3 In the event of conduct on the part of the Customer that is contrary to the contract, especially in the event of a default of payment, we shall be entitled to revoke the authority to resell the goods and to take back the reserved goods or to demand the assignment of the Customers rights to recover possession from third parties; the Customer shall be obliged to return the goods; a right of retention may not be asserted against this right to recover possession. Our demand for the return of the goods does not require a grace period pursuant to Section 323 German Civil Code (BGB) to be set in advance. Subject to the conditions which entitle us to revoke the Customer's authority to resell the goods, we may also revoke the authorisation to collect the receivables and demand the Customer discloses the assigned receivables and their debtors to us, provides all the information that is necessary for the collection, hands out the associated documents and informs the debtors of the assignment.

11.4 The processing or restructuring of the reserved goods by the Customer shall always be undertaken for us. If the reserved goods are processed with other items which do not belong to us, we shall acquire joint ownership of the new item in accordance with the ratio of the end amount charged by us for the reserved goods incl. VAT to the invoice end amounts of the other processed items.
In other respects, the same shall apply to the item created as a result of the processing as for the reserved goods. The buyer shall receive an expectant right to the item created as a result of the processing in accordance with his expectant right to the reserved goods.

11.5 If the reserved goods are inseparably mixed or combined with other items which do not belong to us, we shall acquire joint ownership of the new item in accordance with the ratio of the end amount charged by us for the reserved goods incl. VAT to the invoice end amounts of the other mixed or combined items. If the mixing or combining took place in such a way that the Customer's item can be regarded as the main item, it shall be deemed to be agreed that the Customer shall transfer joint ownership to us on a pro rata basis. The Customer keep the item owned in sole ownership or joint ownership for us at no cost.

11.6 In the event of the resale of our reserved goods after processing or restructuring, the Customer hereby assigns to us by way of security its entitlement to remuneration to the amount of the invoice end amount incl. VAT for our receivables.
If we have only acquired joint ownership in accordance with the Sections 11.4 and 11.5 above on the basis of the processing or restructuring or the mixing or combining of the reserved goods with other items which do not belong to us, the Customer's entitlement to remuneration shall only be assigned to us in advance in accordance with the ratio of the end amount charged by us for the reserved goods incl. VAT to the invoice end amounts of the other items which belong to us. In other respects, with the Sections 11.2 and 11.3 above shall apply to the receivables assigned in advance.

11.7 If the retention of title or the assignment is not valid under the foreign law in the territory where the delivery of the reserved goods takes place, the security which corresponds to the retention of title and the assignment in this legal territory shall be deemed to be agreed. If the cooperation of the Customer is necessary for the creation of such rights, the latter shall be obliged, at our request, to take all the measures which are necessary for the establishment and maintenance of such rights.

12. Place of jurisdiction, place of performance, applicable law

12.1 The place of performance for delivery and payment shall be the domicile of our company for both Parties.

12.2 The place of jurisdiction for all legal disputes arising from the contractual relationship, as well as relating to its creation and its validity, shall be the domicile of our company for both Parties in the case of merchants. We may also bring an action at the domicile of the Customer at our discretion.

12.3 The contractual relationship shall be exclusively subject to German law. The application of the UN Convention on the International Sale of Goods (CISG) shall be excluded.

Herbafood Ingredients GmbH

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Code list
ME* = quantity unit
01 = pc; 02 = kilogram; 03 = 100 kilograms; 04 = tonne; 05 = gram; 06 = litre; 07 = metre; 08 = centimetre; 09 = °Sag; 10 = kWh; 11 = hour
PE* = price unit
1 = per kilogram; 2 = per 100 kilograms; 3 = per tonne; 4 = per pc; 5 = per °Sag; 6 = per hour; 7 = per metre; 8 = per centimetre; 9 = per gram; 10 = per litre; 11 = per kWh
VAT* = value added tax