

# GENERAL TERMS AND CONDITIONS OF PURCHASE

## Tradin Organics USA LLC

### 1. Applicability

- 1.1 These General Terms and Conditions of Purchase (hereinafter to be referred to as: “Conditions”) apply to all the offers made and tenders submitted to Tradin Organics USA LLC, a Delaware limited liability company, all its legal successors and all legal entities affiliated with Tradin Organics USA LLC (hereinafter collectively to be referred to as: “Tradin”) and to all agreements to which Tradin is a party as the buyer/commissioning party.
- 1.2 In case of conflict between provisions of these Conditions and other written provisions that are contained on a sales order or purchase order executed by supplier and Tradin (in accordance with Article 2 hereof), the latter take precedence as to specifications, dates and place of delivery, price and time of payment. Any additional or different terms contained on a form of supplier that either (a) are not executed by Tradin (in accordance with Article 2 hereof); or (b) conflict with these Conditions as to any matter not referred to the preceding sentence are hereby rejected and form no part of the agreement of the parties.

### 2. Establishment of agreement

- 2.1 The contract of Tradin and the supplier (hereinafter referred to as the “Contract”) refers to the total legal obligation of the parties as supplemented by any applicable rules of law. The agreement of Tradin and the supplier (hereinafter referred to as the “Agreement”) means the bargain of Tradin and the supplier consisting of (A) these Conditions; (B) any sales order or purchase order executed by supplier and Tradin, to the extent not inconsistent with these Conditions or as provided in Section 1.2; (C) and amendments to either of these contained in a writing executed by Tradin and in accordance with Article 20.
- 2.2 Any offer made by the supplier is irrevocable for a period of three months from the date made in a record authenticated by the supplier, unless it is unequivocally clear from the offer that the offer may be revoked or may be revoked earlier than three months from the date of the record.
- 2.3 An Agreement with Tradin for the purchase and sale of particular goods shall not be effective until it has been confirmed in writing by Tradin in accordance with Section 2.4.
- 2.4 Tradin may only be bound by any Agreement when such Agreement is executed by an authorized officer of Tradin.

### 3. Risk

- 3.1 Unless agreed otherwise in writing, the supplier bears the risk for the goods, including the risk for the transport, loading and unloading of the goods, up to the moment that the goods have been explicitly accepted by Tradin.

### 4. Quality

- 4.1 Without prejudice to the statements or stipulations made in the Agreement and in the specifications, indications and descriptions contained in the Agreement, supplier shall in any case guarantee with respect to the goods:
  - a. that such goods entirely conform to the provisions or specifications made in the Agreement, e.g., quantity, description, quality, origin, etc.;
  - b. that the goods qualify as “organic” as required by the Contract only if they have been qualified as such by a recognized certification body in the country of customs inward clearance or under U.S. Department of Agriculture regulations if the goods are not imported;

- c. that they have been made, produced, composed or cultivated from new seeds or stock and in soil/ground/locations only as agreed between Tradin and the supplier;
- d. that they have been cultivated, produced, composed or cultivated in accordance with the highest standards of organic agricultural practice;
- e. that, to the extent that samples or examples were shown or provided, the goods are identical to these samples or examples;
- f. that they meet the applicable requirements with regard to use, yield, etc. agreed or indicated or defined in the Agreement and/or the specifications and qualities that are part of the Agreement;
- g. that they are merchantable and fit for any purpose Tradin has disclosed to supplier; and
- h. The goods comprising each shipment or other delivery hereafter made by supplier) to, or in the order of Tradin is hereby guaranteed, as of the date of such shipment or delivery, to be, on such date, not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, and not an article which may not, under the provisions of section 404, 505, or 512 of the act, be introduced into interstate commerce.

4.2 If the Agreement refers to quality and/or other regulations that have not been attached to the Agreement, the supplier is expected to be acquainted with such regulations and such regulations form part of supplier's obligations under the Contract.

## **5. Inspection and examination**

5.1 Tradin may, upon reasonable advance notice to supplier, carry out inspections and/or examinations of the goods to be delivered or any part thereof, by itself or through agents, and supplier shall provide full cooperation for the inspections and/or examinations, including obtaining any necessary third-party consents.

5.2 Upon request of Tradin, the supplier shall provide to Tradin an authenticated copy of any inspection results or test reports applicable to the goods covered by the Agreement.

5.3 Tradin shall be entitled during normal business hours and on business days to visit the locations where supplier produces or stores the goods. If necessary, supplier shall provide a suitable room for inspection or examination and any further cooperation required for this purpose, including any third-party consents.

5.4 Supplier shall follow Tradin's reasonable instructions for the production or storage of the goods while in supplier's possession or the possession of any bailee or carrier.

5.5 Any failure to comply with Sections 5.1-5.4 hereof shall be an event of default by supplier and Tradin shall be entitled to remedies including cancellation upon such an event of default.

5.6 In the event of rejection of the goods, Tradin shall give notice of rejection to the supplier. Tradin shall store or arrange for storage of the rejected goods at the risk and expense of the supplier. If the supplier has not taken back the goods within a period of fourteen (14) days (or such shorter time as Tradin deems reasonable if the goods are perishable or spoiled) after Tradin has informed the supplier that the goods delivered have been rejected, Tradin shall be entitled to return the goods to the supplier at the supplier's risk and expense, without the supplier's approval being required. If the supplier should refuse to take delivery of the goods, Tradin is entitled to store, sell or destroy the goods at the risk and expense of the supplier.

## **6. Packaging**

6.1 Goods to be supplied to Tradin must be properly packed in accordance with applicable law, the Agreement and/or their nature and the use that is normally made of them.

6.2 Supplier shall follow Tradin's instructions with regard to packaging, transportation, preservation and marking.

- 6.3 Supplier shall indemnify Tradin against all costs that Tradin has to incur as a result of inadequate packaging or marking and/or as a result of costs, including any fines or other payments due to any governmental authority, that are imposed in connection with the removal, disposal or destruction of excess or mismarked (and for Tradin commercially worthless) packaging material.
- 6.4 In addition to any other rights and remedies Tradin may have with respect thereto, including the right to cancel, the right to damages, and indemnity under Section 6.3, Tradin is entitled to refuse, at supplier's risk and expense, delivery of any goods that do not comply with the provisions in this Article 6.

## **7. Delivery**

- 7.1 Time, including time of delivery, is of the essence of the Agreement.
- 7.2 The supplier shall promptly notify Tradin when it becomes aware that it will not deliver in a timely fashion as soon as practicable after it has knowledge thereof.
- 7.3 If the goods have not been delivered within the agreed-upon term at the agreed-upon place, the supplier shall pay, if Tradin in its sole discretion shall agree to accept delivery of the delayed goods, liquidated damages in the amount of [1%] of the contract value of the delayed shipment for each day's delay, which shall be deemed a reasonable estimate of Tradin's damages under Section 2-508(2) of the Uniform Commercial Code and shall be in addition to any damages for nonconformity. Tradin may recoup such payment from the purchase price without notice to supplier.
- 7.4 If Tradin is unable to take delivery of the goods at the agreed time, at Tradin's request supplier shall (cause to) store the goods at the supplier's location, or at the location of one or several third parties to be accepted by Tradin. In such case, Tradin shall be obliged to compensate supplier for the reasonable costs for storage of the goods.

## **8. Supplier's liability**

- 8.1 Supplier shall be liable for any damage directly or indirectly caused by non-compliance, late compliance or inadequate compliance with any obligation under the agreement on the part of the supplier and/or its employees and/or third parties instructed by the supplier and for any damage directly or indirectly caused by the supplier's failure to (timely notify Tradin of a delay or that any other failing on the part of the supplier is to be expected. Damages include not only direct damages to Tradin but also damages due to injury and/or death and includes damages suffered by Tradin and/or any subsequent purchasers or users and/or any other third party.
- 8.2 Supplier shall indemnify Tradin against all third-party claims, for any reason whatsoever, for compensation of damage, costs or interest relating to the goods, caused by the goods and/or following from the use of these goods unless and to the extent that the supplier proves that the damage and/or loss was caused as a result of an act or omission of Tradin, either wilfully or recklessly, pursuant to a final judgment not subject to further appeal from a tribunal having jurisdiction over Tradin and in accordance with the terms of the Contract.

## **9. Cure by Supplier; Cover by Tradin**

- 9.1 Upon demand by Tradin, supplier shall, at its sole expense, repair any shortcoming, damage or defect in the goods as soon as possible by replacing them with goods that are in conformity with the agreement, without prejudice to Tradin's right to claim damages.
- 9.2 Tradin is in any event entitled in its discretion to effect cover in the event of supplier's failure to supply goods in conformance to the contract in a timely fashion, without the supplier being discharged from its obligations under the Contract and notwithstanding Tradin's right to claim damages.

## **10. Processing of Tradin's Goods**

- 10.1 If Tradin provides goods to the supplier to be processed or to be combined or mixed with goods that are not Tradin's property, then Tradin's goods shall remain Tradin's property until physically united with other goods in such a manner that their identity is lost in a product or mass. Tradin is hereby authorized to file financing statements in appropriate jurisdictions as to the goods so supplied and to notify secured creditors of supplier of Tradin's ownership interest in such goods.
- 10.2 Supplier is not entitled to transfer or encumber the goods referred to in Article 10.1 or to allow them to be possessed by or bailed to any third parties. Supplier furthermore cannot subject such goods to a security interest, and shall not be entitled to process or cause to be processed such goods, or to combine or mix them with other goods, or to take such action with regard to those goods that they become a part or element of one or several goods that are not Tradin's property, except as expressly intended by the Agreement. In the event of supplier's insolvency, Tradin shall be entitled to its rights under Section 9-336 of the Uniform Commercial Code, in particular Section 9-336(f)(2), with respect to such goods.
- 10.3 Notwithstanding supplier's liability as set out in these Conditions, supplier bears full responsibility for any damage caused to the goods referred to in this Article 10, as well as for any damage directly or indirectly caused by such goods, and the supplier shall indemnify Tradin against any third-party claims pursuant to or related to such damage. Supplier is obliged for its own account to be adequately insured with regard to the liability referred to in the previous sentence and shall cause Tradin to be named as an additional insured with waiver of subrogation with respect to such insurance.

## **11. Information**

- 11.1 Supplier undertakes to timely supply Tradin with such information as Tradin shall reasonably request and in addition any other information reasonably necessary for the use and preservation of the goods to be delivered under the Agreement.
- 11.2 Supplier is obliged to make available such information as Tradin shall reasonably request with regard to the features, characteristics, quality, etc. of the goods to be delivered, which is necessary or desirable in relation to applicable health, safety, labeling or environmental matters.

## **12. Transfer of ownership**

- 12.1 All goods shall unconditionally become Tradin's property on delivery.
- 12.2 Supplier guarantees that unencumbered ownership of goods is acquired by Tradin.
- 12.3 Suppliers waives any right to invoke a retention of title.
- 12.4 Supplier indemnifies Tradin against any costs that Tradin has to incur and any damage that Tradin suffers if any burden or any right still rests on the goods at the time of delivery, or if third parties claim any right with regard to those goods, including under Section 2-402 of the Uniform Commercial Code.
- 12.5 Supplier agrees that in the event Tradin reasonably believes the goods are encumbered by a lien, statutory trust or other obligation owed to someone other than supplier, Tradin may pay such lienholder and reduce its payment to supplier in a like amount, or issue such lienholder and supplier joint checks, at Tradin's option, unless given evidence reasonably satisfactory to Tradin that such lien has been discharged in full.

## **13. Statutory regulations**

13.1 Supplier guarantees that the composition, capacity, packaging and quality of the goods, as well as the use of the goods, shall in every way be in accordance with the conditions and requirements stipulated in the Agreement, any applicable laws, guidelines, regulations and rules of the government, including those of international organizations and supranational authorities, applicable either in the country where they were produced, in the place of loading or in another place where they were in transit, in the country where the supplier is based, in the place of delivery and at the final destination of the goods.

#### **14. Price and payment**

14.1 The purchase price to be paid by Tradin shall be expressed in US Dollars or in another currency to be agreed upon with Tradin. Supplier shall not be entitled to amend the prices agreed upon.

14.2 Save if explicitly otherwise stipulated in the Agreement, the agreed price shall be the full price for the goods to be delivered, including the costs of packaging, transport, insurance and delivery at the location(s) indicated by Tradin, and any taxes or imposts to which the goods or the transaction is subject.

14.3 Tradin shall pay the supplier's invoices within sixty (60) days after the receipt of the supplier's invoice, unless otherwise agreed in writing.

14.4 Payment by Tradin shall be without prejudice to any rights Tradin may have hereunder. No payment shall be deemed an accord and satisfaction or a release of claims in any dispute unless Tradin expressly so agrees in writing.

14.5 In the case of delivery of goods to a location other than agreed, if Tradin agrees thereto in writing subsequent to such misdelivery, the additional costs shall be for the account of the supplier, save if and to the extent the parties have otherwise agreed in writing.

14.6 Tradin shall be entitled to offset the amounts due to the supplier against any amounts the supplier is due to Tradin. Supplier shall have no right to set off, recoupment and/or deduction.

#### **15. Intellectual property rights**

15.1 Supplier guarantees that the goods delivered in no way violate any third-party intellectual property rights.

15.2 Supplier guarantees to indemnify Tradin against any claims ensuing from any third-party intellectual property rights.

#### **16. Tradin's liability**

16.1 Tradin is not liable for damage resulting from any act or omission on the part of Tradin, its employees, agents, representatives or any third party instructed by Tradin, unless and to the extent that the supplier proves that the damage and/or loss in a final judgment not subject to further appeal from a tribunal having jurisdiction over Tradin and in accordance with the terms of the Agreement was, caused as a result of an act or omission on the part of authorized officers of Tradin, through gross negligence or wilful misconduct.

16.2 If Tradin is, for whatever reason, not entitled to invoke the limitation of liability as set out Section 16.1 of these Conditions, any liability of Tradin shall at all times be limited to a maximum of \$150,000 for each occurrence or series of occurrences with the same cause, unless and to the extent that the supplier proves that the damage and/or loss in a final judgment not subject to further appeal was caused as a result of an act or omission on the part of authorized officers of Tradin, through gross negligence or wilful misconduct.

16.3 IN NO CASE SHALL TRADIN BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGE AND/OR LOSS, SUCH AS BUT NOT LIMITED TO LOSS OF PROFIT, COSTS FOR DEMURRAGE OF ANY MEANS OF TRANSPORT (FLOATING OR ROLLING) OR DISPATCH MONEY.

16.4 All claims against Tradin must be submitted to the competent court within twelve (12) months after the supplier has become or reasonably should have become aware of the damage and/or the shortcoming, failing which any right to damages shall be expired.

## **17. Force majeure**

17.1 If force majeure impedes either party from complying with any obligation, Tradin shall be entitled to suspend fulfilment of its obligations up to the moment that force majeure has ceased to exist, or to entirely or partially dissolve or terminate the agreement, without incurring any liability for costs and/or damage.

17.2 If force majeure impedes Tradin from complying with any obligation with respect to one or several of its suppliers or contract partners, however not with respect to all, Tradin shall be entitled to decide which of the obligations and with respect to which of his contract partners he will comply with, as well as the order in which this shall take place, without incurring any liability for costs and/or damage.

## **18. Security**

18.1 Whenever Tradin has reasonable grounds for insecurity about supplier's performance at any time, at Tradin's request, supplier shall undertake, prior to commencement or continuation of the work assigned to it, to provide adequate security for its compliance with his obligations.

18.2 If at Tradin's discretion supplier is unable to show evidence or provides inadequate evidence of the requested security, Tradin shall be entitled to cancel the Agreement either entirely or partially, without incurring any liability for costs and/or damage and without prejudice to its right to damages, including cover.

## **19. Cancellation**

19.1 If supplier should fail to fulfil any of its obligations, Tradin is entitled to suspend the performance of any of its obligations and/or to immediately cancel the Agreement, without prejudice to Tradin's right to remedies, including without limitation damages.

19.2 Notwithstanding Tradin's other rights pursuant to the Agreement, Tradin is entitled to immediately cancel the Agreement with the supplier if:

- a. the supplier is insolvent;
- b. the supplier files a petition in bankruptcy or is subject to an involuntary petition in bankruptcy not dismissed within sixty (60) days of filing;
- c. the supplier ceases to pay its debts as they come due;
- d. the supplier is put in receivership;
- e. the supplier is dissolved or goes into liquidation or a decision to dissolve or liquidate is taken;
- f. the supplier merges with a third party or is taken over by a third party;
- g. the supplier's legal form is altered;
- h. any of the supplier's assets are attached; or
- i. the supplier so changes its methods of doing business so that its ability to comply with the Contract is in jeopardy.

19.3 If one of the situations referred to in Article 19.1 or 19.2 occurs, all of Tradin's claims against supplier shall be deemed accelerated and be fully payable on demand.

## **20. Amendments**

20.1 Amendments to the Agreement are only valid if they are made in writing and executed by both parties by duly authorized officers thereof. Tradin may conclusively presume that any officer of supplier purporting to execute an amendment is so authorized unless provided written evidence to the contrary in advance of the effectiveness of such amendment.

**21. Confidentiality**

21.1 All information about Tradin which has not been made public by Tradin in some way and which supplier receives in connection with the agreement, is confidential and may not be passed on to third parties.

**22. Waiver**

22.1 No waiver by Tradin of any of the provisions of this agreement is effective unless explicitly set forth in writing and signed by Tradin. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**23. Applicable law**

23.1 All legal relationships arising out of or in connection with: this Contract and contracts or agreements previously entered into by the parties, the delivery of the goods, or these Conditions shall be governed exclusively by laws of the State of California with the exclusion of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods, 11 April 1980).

23.2 All disputes arising out of or in connection with the Contract, any agreement previously entered into by the parties, or these Conditions shall be exclusively decided by the competent state or federal court located in Santa Cruz County, California or in the Northern District of California. The supplier hereby irrevocably submits to the jurisdiction of such courts and agrees that venue shall be proper therein.

**24. Validity**

24.1 In the event that any provision in these Conditions should be declared invalid in whole or in part, then this will not in any way have any implications for the validity of the other provisions in these Conditions, which shall be reformed so as to reach as close as possible to the same result but without the offending provision.