

## GENERAL TERMS AND CONDITIONS OF SUPPLY

### SunOpta Foods Bulgaria EOOD

Nederlands: voor cliënten wordt er op verzoek kosteloos een Nederlandse versie ter beschikking gesteld.  
Deutsch: Kunden können auf Anforderung gern eine deutsche Version unserer Bedingungen erhalten.

#### **1. Applicability**

- 1.1 These General Terms and Conditions of Supply (hereinafter to be referred to as: "Conditions") govern all tenders, bids, firm offers, contracts with and deliveries and services provided by or on behalf of SunOpta Foods Bulgaria EOOD, all its legal successors and all legal entities affiliated with SunOpta Foods Bulgaria EOOD (hereinafter to be referred to as: "SFB") and to all agreements to which SFB is a party as the seller/contracted party.
- 1.2 Should there be a conflict between the terms of these Conditions and other terms of the contract made in writing, the latter have precedence.
- 1.3 In case of differences between the Dutch text of these Conditions and versions of these Conditions in other languages, the Dutch text shall take precedence.

#### **2. Bids / offers**

- 2.1 Each bid or offer made by SFB is always without obligation and non-binding for SFB even if this bid or offer includes a term of acceptance, except and insofar as it is expressly stated to the contrary in writing by SFB.

#### **3. Establishment of a contract**

- 3.1 A contract is established with SFB at the moment that SFB confirms in writing its acceptance of an assignment or order. The scope and content of the contract are as they are stated in SFB's written confirmation.
- 3.2 Any agreement/contract exceeding a contract value of € 100.000,- is only validly concluded if signed by a member of the management of SFB whose authority to sign and bind SFB is registered with the Chamber of Commerce in Amsterdam. Any agreement/contract not exceeding a contract value of € 100.000,- can only validly be concluded by an officer of SFB whose authority to sign and bind SFB is registered with the Chamber of Commerce in Amsterdam.

#### **4. Samples and analysis**

- 4.1 If a sample has been provided by SFB to the Counterparty, the Counterparty is entitled to reject the sample provided by SFB without stating a reason as long the Counterparty informs SFB of its rejection in writing no later than the 1<sup>st</sup> working day following the day on which the Counterparty received the sample. In the absence of this, the sample is deemed approved. Upon timely rejection, the sales contract is dissolved without any obligation to pay damages.

4.2 Any analysis results provided by SFB and carried out by an external independent competent laboratory shall be binding upon the Counterparty and any subsequent buyers.

## **5. Requirements and warranties**

5.1 SFB does not guarantee that the goods are suitable for any intended use or otherwise, unless it has been explicitly agreed in writing that the goods must be suitable for the described intended use. The Counterparty shall then be obliged to indicate explicitly in writing what use is intended with the goods.

5.2 Before delivery of the goods the Counterparty shall inform SFB in writing about all the (statutory) regulations and all the (other) requirements which will apply in relation to the goods in view of the purpose, the location and the circumstances.

5.3 SFB need only ensure that the goods comply with the requirements that have been agreed in writing between the parties.

5.4 SFB shall not be obliged to give any further guarantees than those that have explicitly been agreed in writing as such between the parties.

## **6. Security**

6.1 SFB can require the Counterparty to provide security or additional security for payment at any time during the course of the contract. If the Counterparty does not honour a reasonable request for the same, SFB is entitled to suspend the performance of its obligations until the Counterparty has provided the required security.

## **7. Third parties**

7.1 SFB may involve third parties in the execution of the contract. The expenses involved will on a fair and reasonable basis be invoiced to the Counterparty.

## **8. Order of fulfilment of contracts**

8.1 If several contracts for the same product have been concluded between the Counterparty and SFB on identical terms of shipment or delivery, such contracts must be fulfilled in the order in which they have been concluded and with due observance of the agreed time of shipment or delivery, unless explicitly agreed otherwise in writing.

## **9. Presentation of documentation**

9.1 SFB will present the documents to the Counterparty as soon as possible.

9.2 If SFB can prove that the documents were presented to him or reached him too late due to the negligence of the post office, the bank, or through (other) circumstances beyond his control and that it has immediately taken all necessary steps to take possession of the documents and to provide them to the Counterparty, it cannot be held liable for expenses and/or damages, however stated and however incurred due to delayed presentation of the documents.

9.3 The Counterparty is not entitled to object to variations of minor significance in despatch, markings and numbers of packages, or in details about the means of transport, as long as the consignment upon arrival can be recognized as that intended to be delivered in the consignment concerned.

## **10. Risk**

10.1 All risks with respect to the goods are borne by the Counterparty: in case of goods sold from stock, from the moment these are separate for the benefit of the Counterparty and in the case of other goods, from the moment these goods are loaded for their carriage, except if and to the extent otherwise agreed in writing.

## **11. Shipment, delivery and period of delivery**

11.1 SFB is entitled to deliver in instalments, which instalments can be invoiced separately.

11.2 SFB will try to honour the term of delivery as far as possible, yet will never be liable for exceeding it.

11.3 Exceeding the term of delivery does not give the Counterparty any right to cancel or withdraw from the contract, nor to refuse to accept any goods. In case of delivery on equal spread, any delay in delivery of any part of the goods does not give the Counterparty any right to cancel or withdraw from the contract, nor to refuse to accept any goods. In case of excessive overrun of the term of delivery, the parties will consult with one another.

11.4 If SFB has undertaken responsibility for forwarding the goods from the place of unloading, the Counterparty must give SFB timely instructions regarding carriage and destination. If upon arrival of the goods SFB has received no forwarding instructions from the Counterparty, SFB shall despatch the goods to the Counterparty's address by whatever means of carriage it may think the most suitable for the purpose.

11.5 The Counterparty must take delivery of the goods immediately after it has been notified by SFB that the goods are ready for delivery. If the Counterparty fails to take timely delivery of the goods, SFB is entitled to claim all damage and/or costs arising therefrom, including but not limited to storage costs, financing costs and costs for loss of quality of the goods.

11.6 If goods are not unloaded in the intended place of unloading as a result of any circumstance for which SFB is not accountable, SFB shall be entitled to charge the extra freightage incidental to such unloading elsewhere.

## **12. Force majeure**

12.1 If SFB is prevented by force majeure from fulfilling any commitment and the conditions of force majeure are in SFB's opinion of a temporary or passing nature, SFB is then entitled to delay performance of its commitments until the situation, reason, or event occasioning force majeure no longer exists.

12.2 If the situation of force majeure continues for longer than 30 calendar days, SFB and the Counterparty each have the right to terminate the contract.

- 12.3 If after a situation of force majeure as described in this Article the conditions are changed in such a way that SFB cannot reasonably be required to fulfil its commitments under the contract, SFB has the right to dissolve the contract.
- 12.4 A situation of force majeure shall in any case exist of, among other causes: strikes; work stoppages; government measures and/or regulations that prevent, delay, or otherwise interfere with the fulfilment of commitments; lack of means of transport; any transport route or manner of transport being inaccessible or unusable; interruption in the supply of energy, raw materials, inputs or end products; technical outages and/or defects.
- 12.5 The summary given in Article 12.4 is not limitative.
- 12.6 If as a consequence of a situation of force majeure SFB is prevented from fulfilling his obligations to one or more of his customers or counterparties, but not his obligations to all of his customers or Counterparties, SFB is entitled to select which of the obligations and for which customers and Counterparties he will fulfil, as well as the order in which this shall be done.
- 12.7 SFB has the right to claim payment for everything done by or on behalf of SFB to fulfil the contract with the Counterparty before the force majeure event occurred.
- 12.8 Should the fulfilment of the contract under increased costs be possible and the Counterparty so wishes, the additional costs will be borne by the Counterparty.

### **13. Right of retention / pledge**

- 13.1 SFB has a right of pledge and a right of retention with regard to anyone who demands the handing over thereof in respect of all goods, documents and monies which by or on behalf of the Counterparty and with whatever destination are in the possession of SFB, as long as the Counterparty has not performed all its obligations towards SFB, in respect of all current and future claims which SFB has or might have on the Counterparty.
- 13.2 SFB can also exercise the rights granted to him in Paragraph 1 with regard to the amounts the Counterparty still owes him in connection with preceding assignments.
- 13.3 In the event of failure to pay the claim the sale of the collateral will be effected in the manner stipulated by law or – if there is agreement in this respect – privately.

### **14. Liability**

- 14.1 Any liability of SFB, whether under contract or in tort, is limited to the obligation to perform in conformity with the agreement or, at SFB's choice, refunding at most the amount agreed for the relevant performance or the performance with which the loss-causing event is connected. In any event, SFB's liability is limited to the amount of SDR 100,000.
- 14.2 The Counterparty shall hold harmless and indemnify SFB against any and all claims that third parties should acquire or allege against SFB and that arise directly or indirectly from or are related to the agreement, unless and to the extent that the Counterparty proves that the damage and/or loss was caused as a result of an act or

omission on the part of the board of directors of SFB, done either with the intent to cause that damage and/or loss or recklessly and with the knowledge that such damage and/or loss would probably result therefrom.

- 14.3 SFB shall never be liable for costs for destruction of goods, consequential loss, SFBg loss and/or immaterial loss of any nature whatsoever, which shall include loss owing to business interruption, loss of profits, loss of income or loss of use of the Counterparty.
- 14.4 SFB shall not be liable for any damage, either directly or indirectly caused by any of its auxiliary persons, agents or representatives.
- 14.5 With respect to products SFB obtained from a third party, the terms applicable to such a contract shall also apply to the Counterparty if and to the extent that SFB invokes them. In such a situation, SFB shall send the terms of such a contract to the Counterparty as soon as it is entered into.

## **15. Claims / complaints**

- 15.1 If the Counterparty is of the opinion that SFB has failed in the performance of its obligations under the contract, he must inform SFB thereof in writing, substantiated with reasons, within 72 hours after delivery of the goods. The Counterparty must send proof to SFB which demonstrates the alleged shortcomings.
- 15.2 If SFB deems any complaint well-founded, it has the right, at its election, to perform in conformity with the agreement or to refund at most the amount agreed for the relevant performance, whereby the Counterparty is held to return the goods to SFB.
- 15.3 Complaints concerning invoices must be submitted to SFB in writing within eight days of the date of the invoice.
- 15.4 If a complaint is not lodged within the term set forth in this Article, or is not lodged in the prescribed manner, the delivered goods will be deemed to have been completely and irrevocably accepted and approved by the Counterparty as fulfilling the agreement. An invoice that is not contested in the prescribed manner and within the term set forth shall be deemed to be irrevocably accepted and approved by the Counterparty.
- 15.5 A complaint shall never relieve the Counterparty of its commitments with respect to SFB.
- 15.6 Returning the delivered goods, or a portion thereof, for any reason, may be done only with SFB's express prior written permission and delivery instructions.
- 15.7 All claims against SFB must be submitted to the competent court within twelve (12) months after the Counterparty has become or reasonably should have become aware of the damage and/or the shortcoming, failing which any right to damages shall be expired.

## **16. Reservation of ownership**

- 16.1 The goods delivered remain the property of SFB until the moment of payment in full of all sums owed by the Counterparty under the terms of the contract.

16.2 In respect of deliveries of goods destined for Germany, both the obligations and the property law consequences relating to the reservation of ownership as stipulated in Article 16.1 are governed by German law. In respect of such deliveries, the "extended retention of title" as set out in the "Germany-clause" attached to these Conditions applies.

## **17. Prices and payment**

17.1 Unless otherwise stated in writing, all prices are in accordance with Incoterms 2010 and exclusive of VAT.

17.2 Unless otherwise agreed in writing, payment must be made by the Counterparty, even in the event that the goods have been lost or damaged during transit, upon first presentation against surrender of a complete set of documents.

17.3 If payment on arrival has been agreed upon, payment must be made immediately when the means of carriage arrives at the place of destination. In the event of arrival on a day other than a working day, payment must be made on the first working day after arrival of the means of carriage at the place of destination.

17.4 If the means of carriage has been lost or has suffered delay through whatever event, payment must be made on the first working day after the day on which according to the latest reported news the means of carriage would have arrived at the place of destination.

17.5 The Counterparty is in no case entitled to any discount and/or set-off and/or suspension of any of its obligations.

## **18. Documentary credit**

18.1 If the parties have agreed that payment shall be made by means of documentary credit, the Counterparty shall ensure that the documentary credit will be available to SFB at such a time that SFB is able to fulfil his contractual obligations. In the event that the Counterparty should fail to fulfil the above obligation, it shall be in default of the fulfilment of its obligations, without any reminder, summons or notice of default being required.

## **19. Negligence, interest and expenses**

19.1 The Counterparty shall be in default simply by virtue of his failure to make payment or to fulfil some other obligation within its specified term, without additional warning, summons, or proof of default being required.

19.2 If a payment due to SFB is not made in a timely manner, the Counterparty will automatically owe SFB interest pursuant to Article 6:119a Dutch Civil Code starting on the date on which the term for payment has lapsed, without prejudice to SFB's other rights.

19.3 The Counterparty shall bear all legal and non-legal expenses, including SFB's expenses for legal aid and advice.

## **20. Cancellation of contracts**

20.1 SFB shall be entitled to terminate the contract with the Counterparty immediately if (not limitative):

- (a) the Counterparty fails to fulfil any obligation pursuant to the agreement;
- (b) the Counterparty has been adjudicated bankrupt or a petition for such bankruptcy has been filed;
- (c) the Counterparty has filed a petition for the suspension of payments or suspension of payments to SFB has been granted to it;
- (d) the Counterparty, being a natural person, is deceased or is made a ward of the court, or if all or part of the estate of the Counterparty is placed under administration;
- (e) the Counterparty, being a legal person, is dissolved or is in liquidation, or a decision is made with respect to the liquidation of the Counterparty;
- (f) the Counterparty merges with a third party or is taken over by a third party;
- (g) the Counterparty changes its legal form;
- (h) there is a substantial change in the Counterparty's business activities.

20.2 If any of the situations referred to in Article 20.1 occurs, all of SFB's claims on the Counterparty shall be fully payable on demand.

20.3 Any right of the Counterparty to dissolve the agreement is excluded.

## **21. Changes**

21.1 Changes to the contract and/or the Conditions are valid only when made in writing and when both parties have given their approval to the change(s).

## **22. Confidentiality**

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

22.2 All data and information provided in the context of a bid or offer expressly remain the industrial or intellectual property of SFB. The Counterparty is expressly forbidden to disclose in any way, any material or any data or information without the prior written permission of SFB. The use of this material and this data and information must remain strictly limited to the Counterparty's own internal use in the context of an order placed with SFB.

## **23. Applicable Law**

23.1 All legal relationships arising out of or in connection with the agreement and/or the delivery of the goods and/or these Conditions shall be governed exclusively by Dutch law, 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 agreement, these Conditions and/or the delivery of the goods shall be exclusively decided by the competent court at Amsterdam, the Netherlands.

## 24. Validity

- 24.1 In the event that any provision in these Conditions should not - either entirely or partially - be valid and/or imperative, then this will not in any way have any implications for the validity of the other provisions in these Conditions.

### GERMANY CLAUSE

#### Verlängerter Eigentumsvorbehalt

- (1) SFB behält sich das Eigentum an den Liefergegenständen bis zum Eingang aller Zahlungen aus dem Liefervertrag vor. Verarbeitung oder Umpackung erfolgt stets für SFB als Hersteller, jedoch ohne Verpflichtung für SFB. Wird der Liefergegenstand mit anderen, SFB nicht gehörenden Gegenständen verarbeitet, so erwirbt SFB das Miteigentum an der neuen Sache im Verhältnis des Wertes der Kaufsache zu den anderen verarbeiteten Gegenständen zur Zeit der Verarbeitung. Erlischt das (Mit-)Eigentum SFB's durch Verbindung, so wird bereits jetzt vereinbart, dass das (Mit-)Eigentum SFB's an der einheitlichen Sache wertanteilmäßig (Rechnungswert) auf SFB übergeht. Der Käufer verwahrt das (Mit-)Eigentum SFB's unentgeltlich. Ware, an der SFB (Mit-)Eigentum zusteht, wird im Folgenden als Vorbehaltsware bezeichnet.
- (2) Der Käufer ist berechtigt, die Vorbehaltsware im ordnungsgemäßen Geschäftsverkehr zu verarbeiten oder zu veräußern, solange er nicht in Verzug ist. Verpfändungen oder Sicherungsübereignungen sind unzulässig. Die aus dem Weiterverkauf oder einem sonstigen Rechtsgrund (Versicherung, unerlaubter Handlung) bezüglich der Vorbehaltsware entstehenden Forderungen tritt der Käufer bereits jetzt sicherungshalber in vollem Umfang an SFB ab. SFB ermächtigt ihn widerruflich, die an SFB abgetretenen Forderungen für dessen Rechnung im eigenen Namen einzuziehen. Diese Einzugsermächtigung kann nur widerrufen werden, wenn der Käufer seinen Zahlungsverpflichtungen nicht ordnungsgemäß nachkommt.
- (3) Bei Zugriffen Dritter auf die Vorbehaltsware wird der Käufer auf das Eigentum SFB's hingewiesen und SFB unverzüglich benachrichtigt.
- (4) Bei vertragswidrigem Verhalten des Käufers - insbesondere Zahlungsverzug - ist SFB berechtigt, die Vorbehaltsware zurückzunehmen oder ggf. Abtretung der Herausgabeansprüche des Käufers gegen Dritte zu verlangen. In der Zurücknahme sowie in der Pfändung der Vorbehaltsware durch SFB liegt kein Rücktritt vom Vertrag.
- (5) SFB verpflichtet sich, die ihr zustehenden Sicherheiten auf Verlangen des Käufers insoweit freizugeben, als der Wert der Sicherheit die zu sichernden Forderungen um 20% übersteigt. Für die Bewertung des Sicherungsgutes ist, auch soweit es be- oder verarbeitet worden ist, der Gestehungspreis maßgebend. Die Bewertung abgetretener Forderungen erfolgt zu deren Nennwert

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