Standard Terms and Conditions of Sale and Delivery Göbber GmbH

1. – General provisions, scope

1) The delivery of goods and performance of services as well as all quotations provided by Göbber GmbH ("Göbber") shall be provided exclusively on the basis of these Standard Terms and Conditions of Sale and Delivery ("T&C"). These T&C shall apply only to contracts concluded by customers who are corporate bodies, partnerships, legal persons under public law within the meaning of Section 310 (1) German Civil Code [Bürgerliches Gesetzbuch; "BGB"].

2) These T&C shall form an integral part of all contracts entered into by Göbber with its Customers for the deliveries and services offered by it. These T&C shall also apply to all future deliveries, services or offers provided to the Customer without separate new agreement thereof.

3) These T&C shall apply exclusively. Any deviating, conflicting or supplementing standard terms and conditions of the Customer shall become an integral part of the contract only if and to the extent that Göbber explicitly consents to this. This consent by Göbber shall in any event, including in cases where, for example, Göbber has unconditionally delivered items to the Customer while being aware of the Customer's standard terms and conditions.

4) Göbber points out, and the Customer is aware of the fact, that the products purchased from Göbber must be in conformity with the (food-related) legal requirements of the country into which the goods are to be sold as agreed between Göbber and the Customer, and that the Customer may therefore not be allowed, as the case may be, to resell those products, either directly or indirectly, into other countries. Any resale shall be at the Customer's risk.

5) Any reference to statutory requirements shall serve clarification purposes only. To the extent not directly amended or expressly excluded herein, the statutory requirements shall always apply, even without any such clarification.

2. – Quotations and conclusion of contract

1) All quotations submitted by Göbber are subject to change and non-binding unless they are expressly designated as binding or are subject to a specified acceptance period.

2) The Customer may place purchase orders in writing (including by fax or e-mail), electronically (EDI) or by telephone. The Customer's purchase order shall be deemed a binding offer to enter into a contract. Unless provided otherwise in the purchase order, Göbber shall be entitled to accept this offer to enter into a contract within fourteen (14) days of receipt thereof by Göbber.

3) Göbber's acceptance may be stated either in writing (including by fax/e-mail), such as in the form of an acknowledgement of order, electronically (EDI) or by delivery of the goods to the Customer. The written acknowledgement of order or, in the event of immediate delivery of the goods to the Customer, the content of the Customer's purchase order shall be deemed in agreement in determining the scope of delivery and the obligation. This is not to affect the delivery of the goods and services, unless the Customer has accepted without changes a binding offer submitted by Göbber.

3 – Product quality, samples, guarantees

1) Unless expressly agreed otherwise in writing, the quality of the products shall be exclusively as set forth in Göbber's product specifications. The quality and declaration of Göbber's products are, in any case, in conformity with the applicable food legislation.

2) The characteristics of samples shall be binding only if they have been expressly agreed as representative of the quality of the products.

3) Any specifications as to quality and shelf-life and any other information shall be deemed guarantees only if this has been agreed upon and expressly designated as such.

4 – Products made to Customer's specifications

1) In cases where Göbber customizes products according to the Customer's specifications (such as samples, recipes), the production of such or the sale thereof, will not violate any third party rights (including, but not limited to, industrial property rights), unless provided otherwise in the purchase order or the sale thereof. Göbber hereby warrants that, by the production or the sale thereof, will not violate any third party rights (including, but not limited to, industrial property rights), unless provided otherwise in the purchase order or the sale thereof. Göbber shall, however, be entitled to suspend the production of goods ordered until receipt of a written confirmation of release for production.

4) If the prices agreed upon are based on Göbber's list prices, the list prices applicable at the date of delivery order shall apply.

5) Unless agreed otherwise in writing, invoices shall be paid within thirty (30) days from the date of invoice and delivery of the products without any deduction. The date of receipt of payment by Göbber shall be deemed the date of payment. Checks shall be considered payment only after clearance. Payment by bill of exchange is excluded.

6) The Customer shall be deemed in default of payment upon expiration of the term of payment. The purchase price shall bear interest during the period of default at the statutory interest rate as applicable from time to time, but no less than nine (9) percentage points above the base rate. Göbber reserves the right to assert further damages on the grounds of default.

7) The Customer shall be entitled to set-off or to a right of retention only to the extent that its claim has been finally and conclusively adjudicated or is uncontested.

6 – Delivery and delivery period

1) Deliveries shall be made free Customer's place of delivery (Clause 5 (1)) unless expressly agreed otherwise in writing.

2) Göbber shall be entitled to provide and invoice partial services or deliveries unless a homogenous service or item has to be provided under the contract.

3) Any time limits and dates for the performance of services or delivery of items announced by Göbber shall always be considered approximate and subject to change unless a fixed date or fixed period has been expressly promised or agreed upon. Contracts where time is of the essence shall not be concluded. In cases where shipment has been agreed upon, delivery periods and delivery dates shall refer to the time of delivery to the forwarding agent, freight carrier or other third party commissioned to carry the goods. Compliance with delivery periods and delivery dates shall be subject to our own proper and timely provisioning.

4) Göbber shall not be liable for the impossibility of, or delay in, delivering items or performing services to the extent that such impossibility or delay is caused by force majeure or other events beyond Göbber's control that were not foreseeable at the time of entering into the contract (such as disruptions of operations of any kind, difficulties in procuring material or energy, delays in transportation, strikes, legal lockouts, shortage of labor, energy or raw materials; difficulties in obtaining the required governmental authorizations, governmental: actions or omissions, or in cases where Göbber’s suppliers fail to make delivery, ship the wrong items or deliver late). If Göbber is unable to observe binding delivery periods for the above mentioned reasons beyond its control, it shall notify the Customer accordingly without delay and, at the same time, communicate the new anticipated delivery period. If the performance is not available even within the new delivery period, Göbber shall be entitled to rescind the contract in whole or in part, any compensation already paid by the Customer shall be reimbursed by Göbber without delay. In the event that the delivery or the service is not reasonably acceptable to the Customer due to the delay, the Customer may rescind the contract by immediate written notice to Göbber.

5) The question of whether Göbber is in default of delivery or performance of services shall be determined in accordance with the law. However, a warning notice from the Customer is required in every event. Should Göbber fail to deliver the contract goods or the contract runs out of time, the Customer's right to rescind the contract on account of Göbber's delayed delivery or non-performance of the service is limited to damages pursuant to Clauses 10, 11 of these T&C.

6) Load carriers (in particular Euro pallets) must be exchanged by the Customer directly at the time of delivery or returned free of charge within 14 days. Otherwise, Göbber shall be entitled to charge a handling fee per exchange according to its price list plus costs for each Euro pallet that is not returned or not in the quality grade specified above; this shall apply regardless of the Customer's right to prove that much lower or no expenses have been incurred, and regardless of Göbber's right to claim damages exceeding the aforesaid.
7 – Retention of title

(1) Göbber retains title to the products delivered by it until full payment of all current and future claims Göbber may have against each of the contracts and an ongoing business relationship, regardless of the cause in law of such claims (secured claims).

(2) The products subject to retention of title may neither be pledged to third parties nor transferred by way of security until the secured claims have been fully paid. If third parties acquire the goods subject to retention of title, in particular by attachment thereof, the Customer shall advise them without delay of Göbber’s title to such goods and shall notify Göbber accordingly in writing in order to enable Göbber to enforce its title.

(3) The Customer must handle the products subject to retention of title with care. The Customer shall retain its right alongside Göbber to collect the claims. Göbber accepts this assignment.

(4) In the event of breach of contract by the Customer, in particular if the Customer fails to pay the owing purchase price, Göbber shall be entitled to rescind the contract in accordance with the law, and/or to demand the surrender of the products subject to retention of title. A request for surrender shall not automatically be deemed a rescission; Göbber shall neither be entitled to simply retain the goods nor to resell the goods subject to retention of title and must, at the Customer’s request release items of collateral at Göbber’s choice.

(5) If the Customer is made aware of an incident, a consumer complaint or complaints by regulatory bodies that trigger the justified suspicion that the products delivered by Göbber are unsafe (Art. 14 Regulation 178/2002/EC), the Customer shall notify Göbber accordingly without delay.

The Customer shall not take any measures in response to consumers or the general public or make any promises or give statements to the regulatory authorities (such as product warnings or product recalls) without first having consulted Göbber and having received Göbber’s consent, unless there is imminent danger.

9 – Liability for damages based on fault

(1) Göbber’s liability for damages and compensation of expenses, regardless of the cause in law, in particular based on impossibility of performance, default, defective or wrong delivery, breach of contract, violation of obligations during contract negotiations, and tort, shall, where the liability is based on fault in each case, be limited in accordance with Clauses 9, 10 of these T&C.

(2) Göbber shall not be liable for slight negligence of its corporate bodies, legal representatives, employees or any other persons employed by it in the performance of its obligations, provided that this does not involve damages for the violation of an essential contractual obligation (i.e., an obligation whose fulfillment will allow for a proper performance of the contract in the first place, and on whose observance the other party has relied and may rely as a matter of course). In this case, the liability shall, however, be limited to the compensation of foreseeable damages typical of that type of contract.

(3) The exclusions and limitations of liability set forth above shall equally apply in favor of Göbber’s corporate bodies, legal representatives, employees and any other persons employed by Göbber in the performance of its obligations as well as to the companies affiliated with Göbber.

(4) The limitations set forth in this Clause 9 shall not apply to the liability of Göbber for willful misconduct and gross negligence, decree, warranted qualities, wrongful death, personal injury or harmful health effects, or any liability under the Product Liability Act.

10 – Statute of limitations

(1) The general limitation period for claims due to defects of quality and in title shall be one year from delivery. In cases where the parties have agreed on an acceptance of the delivered goods, the limitation period shall start to run upon acceptance. Mandatory statutory special provisions regarding the limitation of claims shall apply regardless in particular Sec. 438 (1) No. 1, No. 2, (3) BGB, Sec. 444, 479 BGB.

(2) The limitation period pursuant to paragraph 1 of this Clause shall also apply to contractual and extra-contractual claims of the Customer for damages based on a defect of the products, unless the application of the regular statutory limitation period (Sec. 195, 199 BGB) would result in shorter periods in individual cases. Other claims of the Customer shall become statute-barred one (1) year after the start of the statutory limitation period.

(3) Claims of the Customer for damages based on the violation of essential contractual obligations pursuant to Sec. 377 (1) of the German Code of Civil Procedure (ZPO) or, as well as all claims of the Customer for the reasons stated in Clause 9 (4) hereof shall become statute-barred exclusively in accordance with the statutory provisions on the statute of limitations.

11 – Statutory requirements

(1) Unless agreed otherwise in individual cases, the Customer shall be responsible for the observance of all statutory and regulatory requirements regarding the importation, transport, storage and use of the products.

(2) The Customer guarantees that within the scope of the business relationship with Göbber (specifically when using the delivered products and their packaging) it will always act in accordance with all applicable rules of law, in particular those relating to food. Should the Customer violate any such rules of the law, it shall be liable for any direct or indirect damage thereby sustained by Göbber.

12 – Miscellaneous

(1) These T&C and all legal relationships between Göbber and the Customer shall be governed by the laws of the federal republic of Germany without regard to the provisions of the UN Sales Convention and conflict of laws provisions.

(2) The court having venue and subject-matter jurisdiction at Göbber’s place of business shall be the competent court to decide on any disputes arising directly or indirectly from the contract relationship. Göbber shall, however, also be entitled to file action against the Customer at the Customer’s general place of jurisdiction. Any mandatory statutory rules on exclusive places of jurisdiction shall not be affected by this provision.

(3) Should any one or several provisions of these T&C turn out to be ineffective, void or incom-plete, the effectiveness of the remaining provisions of these T&C shall not be affected there- by. To replace such ineffective, void or incomplete provision, Göbber and the Customer shall, in order to fill those lacunae, agree upon legally effective provisions that they would have agreed upon considering the economic goal of the contract and the purpose of these T&C had they been aware of the lacuna. If the ineffectiveness or invalidity of a provision is based on a measure of performance or time (period or deadline), the aforesaid provision shall apply mutatis mutandis to a legally permitted measure of time or performance in lieu of the ineffective or invalid one.