

# General Terms and Conditions of Purchase of Walter Rau Neusser Öl und Fett AG

## 1. General Scope of Application

1.1 Our General Terms and Conditions of Purchase shall apply exclusively; terms used by the supplier which conflict with, or deviate from these General Terms and Conditions shall not be acknowledged by us, except if we have expressly approved their applicability *in writing*. Our General Terms and Conditions of Purchase shall even apply if we, being aware of conflicting or deviating terms used by the supplier, accept the supplier's delivery without reservations.

1.2 Upon execution of the first delivery based on these General Terms and Conditions of Purchase, the supplier acknowledges our General Terms and Conditions of Purchase in their respective current version as agreed upon, also for all further contractual relationships. On first demand, we shall make available the respective current version of our General Terms and Conditions of Purchase to the supplier.

1.3 Insofar as master agreements have been concluded between the parties, these shall take precedence. They are complemented by these General Terms and Conditions of Purchase, provided no more specific regulations have been stipulated therein.

1.4 All agreements concluded between us and the supplier for the purpose of executing the contract, and which exceed or modify these conditions, are to be set out in writing in this agreement. Any modifications, amendments, or oral collateral agreements shall only apply if confirmed by us in writing. Oral collateral agreements shall be null and void.

1.5 Our General Terms and Conditions of Purchase shall only apply in relation to entrepreneurs according to Section 310 paragraph 4 German Civil Code (BGB).

## 2. Accomplishment of the Contract

2.1 Only orders in writing and with signature or orders with note of validity or electronic note of origin shall be valid. The contents of our purchase order shall exclusively prevail.

2.2 The supplier shall be obliged to confirm our order within ten (10) days after purchase order date. After this term has expired, we shall be entitled to rescind our order. Any claims of the supplier due to an effectual rescission shall be excluded.

2.3 We shall be entitled to demand modification of the deliverable even after conclusion of the contract using equitable discretion, provided the modifications are deemed acceptable to the supplier.

2.4 The supplier shall only be entitled to commission subcontractors with our written approval.

2.5 Any correspondence has to be conducted with our Purchase Department only. The supplier must always indicate our enquiry number, order number, and reference initials.

Address:  
Walter Rau Neusser Öl und Fett AG  
Technischer Einkauf; Industriestr. 36 - 40 41460 Neuss, Germany

## 3. Delivery/Services/Default/Contractual Penalty

3.1 The delivery dates and terms as agreed upon shall be binding. For compliance, the receipt of goods at our premises or at the place of delivery shall matter.

3.2 The supplier shall be obliged to inform us without undue delay in writing - and, beforehand, orally or in textual form - when circumstances occur or become apparent from which it can be derived that delivery dates as agreed upon cannot be met. This shall also apply if the supplier is not responsible for the delayed delivery. If this contractual obligation is violated, we shall be entitled to claim compensation of damages having arisen therefrom. In case of delayed delivery, the supplier shall be obliged to inform us in detail in writing about the reason for the delay and the remedy measures that have been taken and planned by him.

3.3 In case of delivery prior to the date as agreed upon, we reserve the right of return shipment at the supplier's expenses. If no return shipment is made in case of delivery prior to the agreed upon date, the goods shall be stored until the delivery date at the expenses and risk of the supplier.

3.4 We shall only accept partial shipments if they have expressly been agreed upon in writing. In case of agreed upon partial delivery, the remaining quantity has to be specified. Invoicing of partial shipments shall be unauthorised for lack of deviating written agreement.

3.5 In case of default in delivery, we are entitled to the legal claims. In particular, we shall be entitled to claim compensation for damages instead of performance after fruitless expiry of an adequate period of grace and to rescind the contract - also for the non-fulfilled part only. If we claim compensation for damages, the supplier shall have the right to prove that he is not responsible for the breach of duty. The aforementioned grace period shall not be called for if a fixed delivery date has been agreed upon with the supplier.

3.6 In the event of default in delivery, we shall be entitled to claim a contractual penalty amounting to 0.5% of the net delivery value per day of default, however, not exceeding a total of 5% of the net delivery value; any further legal claims, in particular claims for compensation with offsetting of the contractual penalty as well as the rights as stipulated hereinafter shall be reserved. The contractual penalty shall not be deemed forfeited, if the supplier proves that no damage or a considerably lower damage has occurred; in the latter case, we are entitled to claim compensation for the damage actually incurred to us.

3.7 During the default period, we shall be entitled to purchase a substitute from other sources and to reduce the order to our supplier by the quantity of goods and services purchased in this way without constituting any liability towards the supplier, or we shall be entitled to instruct the supplier to purchase the missing goods from third-party sources at the price that had been agreed upon with the supplier.

3.8 The acceptance of a delayed delivery shall not constitute a waiver of claims for compensation or the contractual penalty. The reservation due to delayed delivery shall be deemed to be claimed in due time if we deduct the forfeited amount from the next due invoice but one.

3.9 For number of pieces, weights, and dimensions as well as quantities delivered the values as determined in our goods inward inspection shall be authoritative, provided alternative proofs say otherwise.

3.10 We shall be entitled to request from the supplier a free-of-charge delay of the delivery for a period of up to six weeks. The supplier shall not be entitled to any claims against us due to this delay in delivery. During the aforementioned period, the goods shall be stored at the risk of the supplier. Moreover, we shall be entitled to request a further delay in delivery of up to six months, during which period the goods shall also be stored at the risk of the supplier. In this case we shall be obliged to refund the supplier for adequate storage costs that have been proven by him.

#### **4. Forwarding Instructions/Delivery Dates**

4.1 Deliverables are to be packed in an appropriate and environmentally friendly way and delivered in appropriate receptacles and transport means. In addition, our respective delivery instructions have to be observed.

4.2 A delivery slip has to be attached to each delivery. The delivery slip must contain the date of shipment, the enquiry and order number, and the precise description of the deliverable. Should any costs arise to us due to non-compliance with these regulations, we shall be entitled to claim compensation from the supplier.

4.3 The delivery term or delivery date indicated on our order shall be binding for the supplier.

4.4 If not expressly agreed upon otherwise, transport insurance shall be covered by us. RVS/SVS must not be charged.

4.5 In general, the delivery of the ordered goods shall be executed "free domicile". If, in exceptional cases, freight costs should arise that have been confirmed by us in writing, our routing order for the supplier shall be binding unless barred by an objectively important reason. Additional costs incurred due to non-compliance with the routing order – except in the case as stated in the aforementioned first sentence (last half sentence) – shall be at the expense of the supplier and shall not be accepted by us. Minimum quantity surcharges and other surcharges that have not been confirmed by us in writing are generally not accepted and borne by us.

4.6 Upon dispatch of each delivery, one copy of the advice of delivery must be sent to us without undue delay.

#### **5. Prices/Payment**

5.1 Prices agreed upon are fixed prices free domicile and include any costs for packaging, transport to the indicated point of receipt or point of dispatch as well as costs for clearance formalities and customs.

5.2 Statutory VAT is not included in the price. VAT has to be separately shown on the invoice. Price increases shall be subject to our written confirmation.

5.3 Payment shall be at our choice, including payment methods, as follows:

Invoices received until the third day of the month following the delivery shall be paid until the end of that month; invoices that are received later shall be paid until the end of the month following the receipt of the invoice.

If we pay within 14 days after receipt of invoice and receipt of goods, we shall be entitled to an early payment discount of 3%, provided no other individual contractual agreements have been concluded in writing.

5.4 If bills of exchange are delivered in payment, we shall bear the bill tax and the interest till maturity in the amount of the basic interest rate of the European Central Bank on the day of deposit of the bill of exchange.

5.5 Any payment terms shall not commence before complete delivery or complete accomplishment of the services ordered and before an invoice has been received by us in duplicate indicating the VAT as covered by the contract, the order number, and the taxpayer's ID of the supplier.

5.6 We reserve the right to choose the payment method. Payment by bank transfer or by cheque shall be considered settled in due time when the transfer instruction has been forwarded to our bank or the cheque has been sent off to the supplier.

5.7 The supplier shall bear all risks of sending the cheque by letter by Deutsche Post AG insofar as there was no culpability on our part. Insofar, the supplier shall bear – besides the risks of theft and unauthorised encashment – all additional risks incurred to us, in particular bank charges for stop payment orders.

5.8 Credit notes already issued or credit notes to be expected shall be offset by us against payments.

5.9 In case of acceptance of premature delivery, the due date shall be determined by the delivery date as originally agreed upon. Payment shall not be deemed a waiver of possible notices of defects, nor shall it be deemed an acknowledgement of fulfilment in compliance with the contract.

5.10 In case of incomplete or defective delivery, we shall be entitled to withhold payment in full or in relation to the value percentage until proper fulfilment. The supplier shall be entitled to the rights of retention or rights of set-off against our claims only for such claims that have been acknowledged by us or have been determined without further legal recourse, unless the counterclaim is based on a violation of fundamental contractual obligations by us.

5.11 For advance payments exceeding an amount of € 2,500, the supplier shall be obliged to submit on first request an appropriate security for fulfilment of the contract, e.g. a bail issued by a German bank affiliated to the deposit protection fund or similar.

## **6. Force Majeure**

Force majeure, labour conflicts, breakdowns through no fault of one's own, riots, regulatory actions, or other unpreventable comparable incidents not culpably caused by us shall entitle us – notwithstanding our other rights – to rescind the contract in whole or in part, insofar as the duration of these incidents is in no small measure and they cause a substantial reduction of our demands.

## **7. Retention of Title**

If the General Terms and Conditions of the supplier provide for delivery under retention of title, *simple* retention of title shall be deemed agreed upon. In this case, the supplier shall authorise us to process and sell the goods within proper business operations. We, in turn, already now assign our claim against the customer or third parties to the supplier in the amount of the purchasing price including VAT. We shall be authorised to collect the receivables within proper business operations also after the assignment. The supplier shall undertake not to collect the receivables as long as we fulfil our payment obligations towards him. The supplier shall only be entitled to disclose the assignment for cause. We shall not accept an extended retention of title.

## **8. Transfer of Risk/Documents**

8.1 On principle, delivery has to be executed free domicile and shall be executed at the risk of the supplier until the time of complete delivery at the point of receipt or the point of use as agreed upon in the contract.

8.2 The supplier shall be obliged to indicate our exact order number on all shipping documents and delivery slips; if he fails to do so, we shall not be liable for any delay in order handling.

## **9. Inspection of Defects/Liability for Defects**

9.1 Unless no deviating regulation has been agreed upon, we shall be obliged to inspect the goods in compliance with Section 377 German Civil Code (HGB) for possible quantity and quality deviation within an appropriate period of time; our notice of defects shall be deemed delivered in due time provided it is received by the supplier within a term of five working days for visible defects counted from the complete receipt of goods, or, in case of hidden defects, counted from the point in time when they have been detected.

9.2 If a special quality assurance agreement has been concluded between the supplier and us, the obligation to inspect the goods is restricted to transport damages, identity and quality checks.

9.3 We shall be entitled to legal claims for defects in the full amount; in any case, we shall be entitled to claim, at our choice, either remedy of defects or delivery of a new delivery item from the supplier. We expressly reserve the right to claim compensation, in particular the right to claim compensation instead of performance.

9.4 The supplier shall be obliged to reimburse us for all costs incurred to us due to the delivery of defective goods caused by a breach of duty on the part of the supplier, in particular transport costs, infrastructure costs, labour or material costs, or costs for an incoming goods control exceeding the usual extent.

9.5 In case of return shipment of the defective goods, the supplier shall bear the risk of destruction or deterioration of the goods.

9.6 The statutory period of limitation shall be 36 months counting from transfer of risk.

## **10. Warranty/Warranty Handling**

10.1 The supplier shall be responsible in terms of a warranty that all deliveries/services are state-of-the-art, comply with the relevant legal regulations on a national and European level, and correspond to the regulations issued by authorities, Employer's Liability Insurance Associations and German trade associations. Moreover, the supplier shall guarantee the environmental friendliness of the delivered products and the packaging materials. Insofar as deviations from these regulations are necessary, the supplier shall be obliged to obtain our written approval. All other obligations in terms of purchase contract or contracts for

work and labour, including any warranties for the state of the item or the work shall not be affected by this approval. In case the supplier has any concerns as to the order processing or the composition and properties of the items to be delivered as desired by us, he shall be obliged to notify us immediately in writing.

10.2 If the delivered products do not comply with the warranty provided, the supplier shall be liable for any damages resulting from this, including consequential damages.

10.3 We shall be entitled to demand certifications of inspection for the deliverables from the supplier free of charge.

10.4 If material defects occur on delivered goods during the warranty period, the supplier shall be entitled to supplementary performance within an appropriate time limit, provided this is deemed acceptable to us; we shall have the right to choose the kind of supplementary performance. The supplier shall be entitled to the right to decline the kind of supplementary performance chosen by us under the prerequisites as stipulated in Section 439 paragraph 2 German Civil Code (BGB).

10.5 For each delivery, the objective defectiveness of which we detect at a point in time after handing over of the item, we shall charge a cost lump sum for transport, storage, and administration costs in the amount of 250.00 euros plus statutory VAT, as far as the order value of the respective delivery is at least 2,500.00 euros (net). We shall be entitled to prove a damage exceeding this amount. The supplier shall have the right to prove that the costs have not arisen or that they are lower.

10.6 Claims from our part on compensation for damages or compensation for wasted expenditure shall remain unaffected. Any costs incurred with supplementary performance, substitute delivery, or repair (personnel/material costs/transport/necessary recall) shall be borne by the supplier.

10.7 We shall be entitled – without eliminating the obligation of the supplier – to execute the remedy of defects on our own at supplier's costs, if there is imminent danger, special urgency, or if it is about small defects, the remedy of which requires expenditures that do not exceed 5% of the net delivery value of the defective goods, or if a particularly high damage is to be expected in relation to the delivery price.

10.8 In addition, in case of defects of title, the supplier shall indemnify us from possibly existing claims by third parties.

10.9 In case we take back products processed and/or sold by us because of defects in the material delivered by the supplier, or we suffered from an abatement of the purchase price for this reason, or any claims have been filed against us otherwise, we shall reserve the right of recourse on the supplier, whereby the execution of our rights arising from the defect shall not require fixing a time limit as would be the case otherwise.

10.10 In case a material defect shows up within a period of six months after transfer of risk, it shall be assumed that the defect already existed at the time of transfer of risk, unless this assumption is incommensurate with the kind of item or the kind of defect.

10.11 Notwithstanding the aforementioned provision, the statute of limitation for breaches of duty due to malperformance in the form of material defects shall elapse at the earliest two months after the point in time at which we have fulfilled the claims of our customer against us, however, at the latest five years after delivery by the supplier.

## **11. Product Liability/ Indemnity / Liability Insurance**

11.1 Insofar as the supplier is liable for product damage, also in relation to third parties mentioned below, he shall be obliged – if not agreed upon otherwise in writing – to keep us indemnified from all claims of third parties for compensation of damages on first request insofar as the cause has to be attributed to his domain and organisation area. The obligation of the supplier to compensate for damages includes, besides payment of damages to third parties, also costs of legal defence, recall costs, inspection cost, replacement costs as well as appropriate administrative and other expenditures incurred to us for damage processing.

11.2 Within his liability for damages in the sense of subparagraph 1, the supplier shall also be obliged to reimburse for expenditures in accordance with Sections 683, 670 German Civil Code (BGB) as well as Sections 830, 840, and 426 BGB that arise in connection with a recall action processed by us. This shall apply in particular to possible recall actions within the framework of the Product Safety Act. We shall inform the supplier – as far as possible and reasonable – about content and extension of the recall measures to be performed and give him the opportunity to express his views. Other legal claims shall remain unaffected.

11.3 The supplier shall undertake to ensure coverage by a product liability insurance with a flat-rate limit of liability per damage to a person/material damage up to two million euros for a period of five years after having performed the last purchase contract with us; if we are entitled to further claims for compensation of damages, these shall remain unaffected. The supplier shall give us evidence on the aforementioned insurance on first request.

## **12. Proprietary Rights**

12.1 The supplier shall guarantee that no rights of third parties are violated in connection with his delivery.

12.2 In case third parties resort to us in such cases, the supplier shall be obliged to indemnify us from any such claims on first request; we shall not be entitled to conclude any agreements, in particular, to conclude a compromise, with the third party without the consent of the supplier.

12.3 The supplier's obligation to indemnify us relates to all expenditures that inevitably arise from or in connection with the claim of a third party, in particular also to legal defence and administrative expenditures as well as all costs of a necessary substitute delivery.

12.4 If the sale and/or use of the deliverable are prohibited to or by us, the supplier shall be obliged to either make available the legal right of use to us at our choice and at his costs, or he shall be obliged to modify the deliverable in such a manner that the violated proprietary right is not affected.

12.5 The statute of limitation for the claims as mentioned in subparagraphs 1 to 4 shall be 10 years, counted from the conclusion of the contract.

### **13. Documents and Secrecy**

13.1 All business or technical information and data of any kind made accessible by us, including those with characteristics that can be taken from items, documents or data having been handed over and other knowledge or experience, unless and until they are not demonstrably known to the public, shall be kept a secret towards third parties by the supplier. At the supplier's own premises, they may only be made available for use to persons who necessarily have to be involved to fulfil the delivery to us and who have been placed in writing under the obligation to keep any such information a secret; any such information shall remain exclusively our property.

Except for the purpose of deliveries to us, any such information must not be duplicated or commercially used without our prior written consent. The aforementioned secrecy agreement shall also apply after termination of the business relationship between the supplier and us until the respective information or characteristics are legally made available to the public.

On our request, all information and data coming from our company (on our request including copies or records made) and the items made available by us for rent are to be immediately and completely returned to us, or they have to be destroyed with a written proof of destruction sent to our attention.

13.2 We reserve all rights on any such information and data (including copyrights and the application of industrial proprietary rights such as patents, utility patents, brand protection, etc.). Insofar as they have been made available to us by third parties, this legal reservation shall also apply towards these third parties.

13.3 Products that have been manufactured based on documents drafted by us or based on our confidential information, must not be used by the supplier himself or offered or delivered to third parties, unless the information specified by us has already been legally made available to the public or is state-of-the-art.

### **14. Safety Regulations**

14.1 For all products delivered, the supplier shall be obliged to adhere to the prevailing safety regulations and to the corresponding state-of-the-art parameters and limit values, or to those agreed upon exceeding these requirements, respectively.

14.2 The supplier shall undertake to employ exclusively materials that comply with current legal safety constraints and regulations, in particular for toxic and hazardous substances. The same shall hold true for safeguarding provisions in order to protect the environment. This obligation encompasses any provisions that are in force in Europe, including the manufacturing country and – if deviating from these provisions – also those in force in the customer countries as indicated in our order.

14.3 In case we intend to deliver the contractual item to a new, foreign market, we shall immediately inform the supplier about this. The parties shall be obliged to obtain information about possibly more restrictive quality and/or manufacturing standards in this market. If the supplier does not declare within a period of one month that he knows about the new quality and/or manufacturing standards and is able to meet them, it shall be deemed agreed upon that the supplier knows about and will fulfil the quality and/or manufacturing standards in this country.

14.4 If the products delivered by the supplier do not meet the requirements as stipulated in subparagraphs 1 to 3, we shall be entitled to terminate the contract. Claims for compensation exceeding beyond shall be unaffected.

14.5 The supplier shall be obliged to notify us on any intended modifications of the deliverable. They shall be subject to our prior written approval.

### **15. Quality and Documentation**

15.1 The costs for declarations of conformity shall be borne by the supplier. Declarations of conformity in German, and, if required, in English, have to be immediately submitted to us with each delivery.

15.2 Notwithstanding the above, the supplier shall be obliged to continuously inspect the quality of the deliverable. The supplier must notify us immediately about recognisable errors in specifications or foreseeable complications.

15.3 In case the order specifies minimum and/or maximum values of parameters, the maximum values must not be exceeded in any area of the deliverable, the mentioned minimum values must not be fallen short of in any case and in any area.

### **16. Auditing**

16.1 We shall be entitled to conduct audits at the supplier's premises ourselves or have them performed by an expert of our choice. The audit shall encompass an inspection of the factory and the quality assurance system of the supplier and a subsequent assessment. The results obtained during the audit will form the basis for our further procurement and for internal assessment of the factory (rating).

16.2 We shall be entitled to perform inspections of the supplier's current business operations and to monitor his quality assurance measures by prior appointment. Insofar as quality problems have arisen in the past, we shall also be entitled to inspections for monitoring quality assurance measures without prior appointment. This right shall not be due to us if the most recent complaint about supplier's quality assurance measures dates back more than one year, or if during two inspections without prior appointment no shortcomings have been detected.

16.3 Provided we prove an appropriate legitimate interest, we shall be entitled to search the supplier's documents on contractual relationships. Such legitimate interest shall be deemed existing in particular, if and when insights could be obtained enabling to assess the necessity and the handling of a recall.

16.4 Within our exercising of rights according to the aforementioned subparagraphs 1 to 3, the supplier shall not be obliged to disclose any company secrets.

## **17. Batches and Labelling**

17.1 Each delivery should, if possible, come from one batch, i.e. form a homogeneous unit. The batch number has to be marked on each trading unit and on each delivery slip permanently and clearly. If the delivery consists of several batches of the same product, all batch numbers have to be indicated on the trading units and on the delivery slip.

17.2 In all cases of continuous manufacturing processes in which capture by batches is not possible, the true-to-specification quality must be ensured by the supplier. Each trading unit must be permanently and clearly marked with product designation, net weight, batch number, and, if any, remarks on possible hazard warnings and storage advice without any additional costs incurred to us.

## **18. Right of Withdrawal due to Lack of Performance**

If and when our delivery claim is endangered in a more than insignificant way through lack of performance on the part of the supplier (e.g. sustainable economic deterioration, actual impediments to performance), we shall be entitled to withdraw from the contract. Any rights exceeding beyond or other rights shall remain unaffected.

## **19. General Provisions**

19.1 The updating and publication of our respective General Terms and Conditions of Purchase shall generally and exclusively be made on our website – [www.walterrauag.de](http://www.walterrauag.de)

19.2 If and when one of the contracting parties stops payment or enters into insolvency proceedings on its assets, or if court or out-of-court conciliation proceedings are applied for, the respective other party shall be entitled to withdraw from the unfulfilled part of the contract.

19.3 The invalidity of individual provisions shall not affect the validity of the other provisions. The contractual parties shall be obliged to replace invalid provisions by such provisions that result in the same economic success. This shall not apply if and when the invalidity is caused by a breach of duty as specified in Division 2 of Book 2 of the German Civil Code (BGB) with the title "Drafting Contractual Obligations by Means of Standard Business Terms". In this case, the legal provision shall apply. The same shall hold true in case of a gap.

19.4 The law of the Federal Republic of Germany shall exclusively apply.

19.5 The contractual language, proceedings language, and official language used in court shall be German.

19.6 The application of the UN Convention on Contracts on the International Sale of Goods (CISG) shall be excluded.

19.7 Place of fulfilment shall be the delivery destination indicated by us, if not expressly mentioned, it shall be Neuss. Place of fulfilment for payments to us shall be Neuss.

19.8 Place of jurisdiction shall be Düsseldorf. This shall also apply to actions on a dishonoured bill or cheque. However, we shall also be entitled to file legal proceedings against the supplier at his company headquarters or at the place of performance.

## **20. Energy Management System**

Walter Rau AG operates an energy management system aiming at a continuous increase of our energy efficiency. For this reason, we point out towards our suppliers that for the procurement of products, facilities, and services that have an essential influence on our energy consumption, our purchase decision is partly related to the energy-related performance. In doing so, we take the planned or expected service life of the purchased goods as a basis.

In designing new, modified, or refurbished plants, facilities, and systems, we will assess the energy-related performance even more strongly based on the life cycle costs in the future.