

EMN Europe

Purchase Agreement / Sample

The Agreement between Supplier and the ordering division “Buyer”. (Commercial Terms Contracts. / “CTC”).

1. Supply of Products

1.1. The Supplier shall supply to the Buyer, the products (“Products”) and/ or services (“Services”) in accordance with the Agreement and with the skill, care, prudence and foresight of a diligent supplier of such Products/ Services.

1.2. Any items, services, functions or responsibilities not specifically described in the Agreement and which are reasonably necessary for the proper supply of the Products/ Services are deemed to be included within the scope of the Products/ Services to be delivered for the Price.

1.3. The Supplier shall comply with all written policies (whether presented electronically or otherwise), recommendations and requirements and reasonable instructions of the Buyer provided from time to time. The Supplier shall at all times, comply with Buyer’s quality assurance requirements and shall remain responsible for quality assurance with respect to all Products/ Services.

2. Ordering

2.1. The Supplier shall be deemed to have accepted a product order (PO) on receipt unless it gives written notice within 3 days of receipt if the PO does not conform to any relevant CTC.

2.2. If any PO is sent by electronic communication, then Supplier has to confirm the receipt of PO upon receiving.

2.3. Where any correspondence (including emails and CTCs) specifies a volume of Products/ Services to be purchased by the Buyer, such volumes shall be non-binding estimates only, to the Buyer, and shall be without prejudice to the volumes actually purchased under the Agreement, unless expressly stated as binding in the CTC.

2.4. The Buyer may forward regular forecasts of requirements to the Supplier. Such forecasts are non-binding estimates and are intended to assist the Supplier in scheduling its production and delivery of Products or provision of Services and they are without prejudice to the volumes actually purchased under the Agreement.

3. Delivery, Non-Performance & Indemnity

3.1. Without prejudice to any rights of the Buyer, the Supplier shall immediately give notice to the Buyer if it becomes aware or anticipates:

- (a) it will be unable to supply any Products/ Services at the agreed time;
- (b) the Products/ Services do not comply with the Agreement;
- (c) any matter which may result in a potential safety risk to consumers arising from the Products/ Services (whether such risk arises as a result of non-conforming Products or otherwise).

3.2. If any Products/ Services do not comply with the Agreement, or are not provided in full within the agreed time the Buyer may, at its discretion reject the non-conforming or late Products/ Services and/or require the Supplier to re-supply non-conforming Products/ Services at the Supplier's expense or terminate the PO in whole or in part.

These rights to reject and/or require re-supply or terminate shall not affect any other remedy to which the Buyer may be entitled, including without limitation, reimbursement by Supplier for incremental costs incurred relating to procurement of replacement Products/Services.

3.3. If there is any matter which may result in a safety risk to consumers arising from the Product / Services or a voluntary or mandated recall, withdrawal or similar measure ("Recall") of any of the Products, the Supplier shall:

- (a) provide reasonable assistance to the Buyer in developing and implementing a strategy;
- (b) where practicable and as soon as possible give the Buyer advance notice and full details of any action it is legally obliged to take including communicating with any governmental body.

3.4. Except to the extent required to comply with any legal obligation, no Supplier shall voluntarily initiate any Recall of any products without the prior written consent of the Buyer, which consent shall not be unreasonably withheld.

3.5. The Supplier shall ensure it has, and shall for the duration of the Agreement maintain in place, adequate general liability insurance and as relevant, professional liability, product liability and/or other insurance and shall provide satisfactory evidence at the Buyer's request.

4. Price and Payment

4.1. The price for the Products/ Services shall be as set out in the Agreement ("Price") which includes all shipment preparation and packaging cost but excludes VAT, sales tax or equivalent unless set out in a breakdown of the Price and agreed in writing.

4.2. Invoices shall comply with the invoicing requirements imposed by European legislations.

4.3. Payment terms are according to conditions of Supplier, except as specified otherwise in the PO or CTC or if restricted under mandatory Applicable Laws. Where the day nominated or determined for payment is not a day on which banks are open for general business in the country in which the Buyer is located (“Working Day”), then the day for payment shall be the first Working Day after the day nominated or determined.

5. Warranties, Representations, Undertakings and Indemnities

The Supplier represents, warrants and undertakes to the Buyer that:

5.1. It possesses the requisite skill, experience, knowledge, personnel and facilities necessary to fulfill its obligations under this Agreement. Supplier further possesses and/or is in compliance with all necessary licenses, intellectual property (“IP”) rights, permits and approvals required to execute, deliver and perform its obligations under this Agreement.

5.2. At the time of provision, the Products/ Services shall be (where applicable):

- (a) Supplied or manufactured in accordance with the specifications for such Products/Services as approved or provided by Buyer (“Specifications”).
- (b) In good quality
- (c) Free from any defects
- (d) Fit for the purpose for which they are reasonably expected to be used
- (e) Free from any liens, claims, pledges or other encumbrances

5.3. The Products/ Services and their supply, sourcing, manufacture, packaging, sale, delivery or the use by the Buyer thereof shall not infringe the IP rights of any third party. In the event of a third party claim for IP infringement in breach of the Agreement, the Supplier shall be liable for, and shall indemnify, defend and hold harmless Buyer from and against all losses incurred in connection with such claim.

5.4. The Products/ Services supplied shall comply with all relevant laws, including but not limited to governmental, legal, regulatory and professional requirements (“Applicable Laws”) in force in the countries of manufacture and the countries where Products/Services will be used.

6. Supplier Qualification

6.1. Supplier shall maintain its compliance status throughout the term of the Agreement.

6.2. The Supplier acknowledges that Buyer may appoint a nominated 3rd party to verify Supplier’s qualification.

6.3. The Buyer may amend the Mandatory Requirements and shall inform the Supplier of such amendments within a reasonable period of time.

7. Confidentiality

7.1. The content of the Agreement between Buyer and Supplier is a Confidential Information.

7.2. The Supplier undertakes to keep all Confidential Information strictly confidential and not to use any Confidential Information for any purpose other than in complying with its obligations under the Agreement and not to disclose any Confidential Information to any person other than its officers and employees, except to the extent it is necessary for the purpose of performing its obligations under the Agreement.

Any breach of the Supplier's obligations under this clause by its officers and employees shall be deemed to be a breach by the Supplier. Except to the extent required under Applicable Laws or necessary for the performance of remaining obligations under the Agreement, all Confidential Information shall be returned to the Buyer or, if requested, destroyed on termination or expiry of the Agreement.

8. Intellectual Property Rights

8.1. Each party shall remain the owner of all IP owned by it before the start of its relationship with the other party independently or created outside the scope of such relationship ("Background IP").

9. Records, Business Continuity, Data Protection and Privacy

9.1. The Supplier shall keep appropriate records (including in respect of ingredients, components and quality control of Products) for no less than: 5 years; or 7 years for financial information. The Supplier shall at all times upon reasonable notice, allow the Buyer to enter, access, inspect and audit all information, documentation and records related to the Products/ Services, and the location, equipment, stocks, methods used and performance by the Supplier in the preparation, manufacture, packaging, storage, handling and supply of the Products/ Services.

9.2. The Supplier shall reliably back up all data provided, used or generated in connection with the Products/Services and shall otherwise establish and maintain adequate safeguards against the destruction or loss of such data in the possession or control of the Supplier.

10. Term and Termination

10.1. The Agreement shall apply until the expiry or termination of all relevant periods or fulfillment of relevant volumes specified in any part of the Agreement.

10.2. The Agreement may be terminated earlier in whole or part by the Buyer without any penalty or further obligation or liability:

a) on 10 days' written notice in the event of material breach of this Agreement by the Supplier or breach by the Supplier of more than 20% of the number of POs submitted by the Buyer in any preceding 3 month period;

b) on no less than 7 days' written notice where there is material or deliberate or persistent non-compliance with clause 6.3;

c) on giving notice in the event of a Force Majeure Event affecting the Supplier which continues for more than 10 days;

d) for convenience on 30 days' written notice (subject to mandatory local laws requiring a longer notice period);

e) immediately or at a later specified date if the Supplier becomes insolvent or enters into administration or is unable to pay its debts as they fall due or threatens to do any of the foregoing or the equivalent.

10.3. Any individual PO under this Agreement may be terminated earlier by the Supplier on giving 30 days' notice where any invoiced and undisputed sums due under such PO, remain unpaid for a period of 60 days after the applicable due date provided such notice states that a failure to pay within 30 days will result in the termination of that PO.

11. Laws and Jurisdiction

11.1. Unless otherwise specified in a CTC, the Agreement is governed by and construed in accordance with the laws of the European Union.

Annex A - Specific provisions for the supply of Products

1. The Products should be delivered in accordance with the details provided in the CTC or PO or other agreed written instructions. The risk shall pass to the Buyer on delivery.

Delivery terms shall be interpreted in accordance with the current edition of Incoterms at the time the PO is issued. Each shipment of Products will be accompanied by all documentation required under Applicable Laws.

2. The Supplier shall:

(a) only supply Products from a location approved by the Buyer;
(b) at its expense, ensure full traceability of Products, ingredients and components;
(c) keep and provide to Buyer on request a reasonable number of samples of the Products, ingredients and components. This clause shall survive expiry or termination.

3. No Supplier shall without the Buyer's prior written consent change the ingredients or components used to produce the Products, Specifications, manufacturing process, approved plant or agreed delivery method, or implement any changes which alter any of the Products in such a way that is not acceptable to the Buyer's technical clearance process, even if the Products are still within the Specifications.

4. The Buyer relies on the Supplier's quality assurance. All removal and other costs relating to or arising out of defective or non-conforming Products shall be at the Supplier's cost and responsibility.

5. Unless otherwise agreed, Supplier shall ensure that: the Products are prepared for shipment so as to prevent damage, contamination or deterioration to the Products; packaging shall not be assembled using either rivets, steel-staples or steel wire; palletized deliveries shall be stacked neatly with no overhang; pallets shall be stable and protected with an impermeable wrap covering the entire pallet load; and the Products shall be transported in clean, hygienic, physically sound conditions.