

TERMS AND CONDITIONS OF PURCHASE - Nestlé Österreich GmbH

1. **Scope.** The terms of this document (#Contract#) will apply to the purchase of services (#Services#) or goods (including commodities, non-commodities and equipment) (#Goods#) described in the face of this Contract, made by the entity identified in this Contract as #Purchaser# to the entity identified in this Contract as #Supplier#. Specific orders under this Contract will be made through purchase orders ("PO(s)").

If a written agreement applicable to the purchase referred above has been signed between Purchaser and Supplier, or between Purchaser or Supplier and any Affiliate of the other, or between Affiliates of the Purchaser and the Supplier (in any case the #Master Agreement#), the purchase of Goods or Services under this Contract will be governed by the Master Agreement, and the following will apply:

- (i) if the Master Agreement details which are the valid supplemental terms of this Contract, then the only valid terms of this Contract will be those expressly identified in the Master Agreement, or
- (ii) if the Master Agreement does not indicate which are the valid supplemental terms of this Contract, then the Contract will apply in addition to the Master Agreement, but in case of contradiction, the Master Agreement will prevail.

This Contract will be deemed accepted by Supplier upon the first of the following to occur:

- (i) if Supplier does not reject the Contract within 3 days from its issuance by Purchaser;
- (ii) if Supplier expressly accepts this Contract in any form;
- (iii) if Supplier starts performing this Contract in any manner, or
- (iv) when Supplier accepts any payment from Purchaser under this Contract.

Any terms and conditions in Supplier's quotation, acknowledgement, invoices, or any other form of writing related to the transaction established by this Contract, irrespective of its wording or form, or when received by Purchaser will not be applicable or valid. This Contract will prevail over and replace any clickwrap or browsewrap end user agreement included in the Services or in any deliverable under this Contract. Acceptance of Goods or Services delivered pursuant to this Contract will not constitute acceptance of Supplier's terms and conditions, nor will they in any way operate to modify or change the full effect of the terms and conditions herein.

Any reference to a Supplier's quotation or proposal on the face hereof will not be deemed to incorporate any provisions of Supplier's quotation or proposal which are inconsistent or in conflict with any provision set forth in this Contract or any pre-printed provisions contained therein, which provisions are hereby expressly excluded.

All previous communications (excluding the terms of any Master Agreement) are hereby abrogated and withdrawn and no stipulation or agreements by Supplier or any of its officers,

agents, or employees will be binding on the Purchaser unless contained in the Master Agreement, this Contract or referenced herein. No local, general, or trade custom or previous course of dealing or performance will alter or vary the terms hereof.

2. Definitions. For the purposes of this Contract:

- (i) **#Affiliate#** means any company controlling, controlled by or under common control with Purchaser or Supplier where "control" means ownership, directly or indirectly, in an entity of fifty percent or more of the voting rights;
- (ii) **#Force Majeure Event#** means an event caused by a circumstance beyond a party's reasonable control and that could not have been prevented or avoided by the exercise of all due diligence, e.g.: natural catastrophes, war, public power outages, civil unrests and conflicts, acts of terrorism, labour strikes (strikes and other labour unrest that affect only one party and are not caused by a general or mass strike will not constitute an excusable delay), riots, fires, flood, storm, acts of God, governmental action and earthquakes;
- (iii) **#Intellectual Property Rights#** (or "IPR") are defined as trade names, trademarks, logos, brands, service marks, trade dress, copyrights, designs, patents, know-how, trade secrets, plant certificates, and any other intellectual property rights, whether registered or not;
- (iv) **#Laws#** mean any law, regulation, executive order, rule, statute, ordinance or act established or enacted by the applicable authorities, whether national, federal, state, provincial or local, as well as international treaties and conventions, and
- (v) **#Working days#** are the weekdays Monday to Friday, insofar as they are not public holidays at the place of fulfilment, and
- (vi) both the terms Goods and Services include all labour, workmanship, activities, materials, equipment, supplies, transportation and supervision necessary to the proper and complete fulfilment of the referred Goods and Services.

3. Volumes. The quantity of goods or services delivered by Supplier to Purchaser shall not differ from those specified on the face of this Contract, and any other changes to this Contract shall be valid only if the change in question has been approved by Purchaser in writing in advance. If the quantities delivered are not identical to the quantities agreed upon, Purchaser shall be entitled, without limiting any other rights or remedies, to exercise one or more of the following remedies:

- (i) claiming liquidated damages (per working day of delay 0.3% of the net price of the goods/services delivered late, up to a maximum of 5% of the net price of the goods/services delivered late),
- (ii) claiming damages for any costs, losses or expenses incurred by Purchaser in connection with Supplier's failure to deliver the agreed quantities of Goods or Services, with any liquidated damages being set off against the claim for damages.

Unless a volume commitment is established on this Contract or in a Master Agreement, any quantity or volume listed on the face of this Contract is not intended to be a firm commitment

of the amount of goods or services to be purchased by Purchaser but is only an estimated or forecasted amount of goods or services which may be purchased by Purchaser. Purchaser is not subject to penalty and quantities will not carry over if all or any part of estimated or forecasted goods or services is not finally ordered or used.

Purchaser will have the ability to increase this estimated or forecasted volume of goods if its requirements necessitate the increase. Production should only be made against POs. Any production without POs from Purchaser is fully at Supplier's risk.

4. Delivery schedule. Time is of the essence. Supplier will deliver the Services and the Goods by the date(s) specified on the face of the PO. If delivery date(s) cannot be met, Supplier must immediately inform the Purchaser in writing of Supplier's best possible delivery date(s) subject to Purchaser's acceptance. If deliveries are not made at the time agreed upon, Purchaser may exercise without prejudice to other rights and claims one or more of the following remedies:

- (i) request that Supplier ships the Goods by other than designated routing to expedite delivery (cost of alternative means of shipment will be borne by Supplier);
- (ii) cancel the Contract or the applicable PO in whole or in part;
- (iii) refuse to accept any subsequent delivery of Goods or performance of Services;
- (iv) recover from Supplier any expenditure reasonably incurred by Purchaser in obtaining substitution Goods or Services from another supplier;
- (v) apply a penalty for late delivery (per working day of delay 0.3% of the net price of the goods/services delivered late, but not more than 5% of the net price of the goods/services delivered late), or
- (vi) claim damages for any costs, losses or expenses incurred by Purchaser which relate to Supplier's failure to deliver the Goods or the Services on the due date, whereby any penalty shall be set off against the claim for damages.

5. Price and Payment terms. The price of the Goods or the Services is the price stated on the face of this Contract and it includes all charges for production, packing and loading, and any other related charges as per the applicable Incoterms (see Article 11. Risk of loss and title). No price changes will be accepted unless authorized in writing by the Purchaser prior to shipment of Goods or performance of Services. Purchaser shall pay Supplier within the term established in this Contract or in the applicable PO after receipt of Supplier's undisputed invoice for duly delivered and conforming Goods or Services. Supplier will comply with all Purchaser's instructions in connection to invoicing and payment process. Advanced payments, if any, are made in consideration of the future full and satisfactory performance of the Services or delivery of the Goods and will constitute a recoverable advance in case of non-satisfactory, incomplete or non-performance of the Services or delivery of the Goods.

Delay in payments will be notified to Purchaser by Supplier and solved amicably between them, without entitling Supplier to suspend performance of this Contract.

Supplier will assume the risk of unfavourable currency fluctuations between the time of invoicing and the time of payment. Without prejudice to any other right or remedy, Purchaser reserves the right to set off any amount owing at any time from Supplier to Purchaser against any amount payable by Purchaser to Supplier.

6. **Set-off.** The Purchaser shall be entitled to set off claims which are not due or with affiliated companies. The supplier is not entitled to set-off.
7. **Quality.** Supplier will carry out quality assurance testing of the Goods in accordance with the quality standards and issue certificates of conformity or analysis as required by Purchaser, or as otherwise agreed in writing with Purchaser. Supplier will submit to Purchaser free of charge such samples of the Goods, ingredients, and packaging materials to be used in the manufacturing and packaging of the Goods as Purchaser may reasonably require from time to time in order to allow Purchaser to monitor the compliance by Supplier with its obligations. In the event that Supplier becomes aware of the existence of any quality or technical problem relating to any Goods within the control of Supplier, Supplier will ensure that the Goods affected or believed to be affected by the problem are kept separate from all other Goods and are not allowed to leave Supplier's premises without the prior consent of Purchaser. Supplier will establish (with Purchaser's previous approval) reporting procedures with a view to identifying the nature and extent of, and resolving the problem in question, and keeping the appropriate Purchaser representatives informed of all progress being made in these areas.
8. **Packaging. Storage.** Supplier will properly and lawfully package all Goods for safe and wholesome shipment to the Purchaser, or as established in this Contract or otherwise instructed by Purchaser. No charge will be allowed for packing, boxing, or cartage unless accepted in writing by Purchaser. Supplier will be responsible for breakages, shortages and damage caused by inadequate packaging or storage. Storage must be appropriate for the type of Goods and must be made in a dry, clean place, and bird, insect and rodent proof.
9. **Transport.** Transport will be handled in accordance to what is established in the face of the Contract or as instructed by Purchaser. Supplier will be accountable for and pay any excess transportation costs arising from Supplier's failure to follow Purchaser's instructions. In any case, transport must be in clean and safe vehicles. Supplier warrants that any transportation costs included in the price of the Contract will not exceed actual transportation costs paid by Supplier.
10. **Documentation requirements.** Applicable PO number must appear on all containers, papers, packing slips, invoices and all other correspondence or documents related to this Contract. Supplier will comply with all Purchaser's instructions regarding tagging of the Goods and related documentation. Supplier will, in accordance with the applicable Incoterms, be responsible for any and all duties, filings, documentation and record keeping or redeliveries as may be required by the applicable custom services in connection with the Supplier's sale and delivery of Goods to Purchaser and Purchaser's use thereof. Supplier will be accountable for and pay any costs arising from any errors or omissions in performance thereof.
11. **Risk of loss and title.** The risk over the Goods will be transferred to Purchaser in accordance with the Incoterm established in the Contract or in the applicable PO. In absence of that

information, the applicable Incoterm will be #FCA#. Title to the Goods to Purchaser will be transferred together with the risk, as set forth herein.

12. Warranties. In addition to any other warranties included in this Contract or in the applicable Laws, Supplier warrants that the Goods or the Services to be supplied pursuant to this Contract are:

- (i) fit and sufficient for the purpose intended; and
- (ii) in conformity with the specifications, drawings, samples, electronic files, documents, instructions, design descriptions, performance standards of applicable industry or other descriptions, if any, specified in this Contract or which have otherwise been provided to Supplier by Purchaser (#Specifications#). Supplier will not modify or change any Specifications without Purchaser's prior written approval. Any change that may affect product performance, especially the change of place of origin, ingredients or processing, will be implemented only upon prior written approval from Purchaser. Any attached Specifications are hereby made a part of this Contract. Supplier will furnish Purchaser prior to commencing the performance of the Contract with copies of the manufacturer's handbook, patterns, designs, drawings, documents, installation instructions, servicing and maintenance brochures for approval. Supplier will be responsible for all errors or omissions in any drawings, calculations, or particulars supplied by it whether or not Purchaser approved such information. The Goods and the Services will be supplied on the basis that Supplier holds itself out to be expert in every aspect of the performance of the Contract and has full notice of the purpose for which Purchaser requires them.

Supplier warrants to Purchaser that any Goods supplied to Purchaser hereunder:

- (i) are merchantable, of good quality, free from defects (patent or latent) and, in case of edibles, are wholesome and fit for human or animal consumption (as applicable);
- (ii) were grown or manufactured in a facility or under conditions which are free of any contamination, microbiological or otherwise, and with due care and using the necessary hygiene and quality control measures; and
- (iii) have been processed or produced in accordance with the applicable Laws (including the Laws of the place of final destination of the Goods) and are not adulterated, misbranded or mislabelled, nor do such Goods contain any ingredient, colour additive, chemical or element which has not been disclosed as an ingredient of such Goods to Purchaser and which has not been duly approved or certified for inclusion within such Goods by all appropriate authorities having jurisdiction or authority over such Goods. Supplier agrees to use reasonable efforts to seek independent certification that Supplier's food safety and quality management system complies with food safety Laws. Supplier will provide Purchaser with a copy of such certification, or any denial of such certification, issued by the independent certification entity or body promptly upon receipt by Supplier.

Supplier also warrants that:

- (i) it will be fit, qualified and competent to perform its obligations under this Contract;

- (ii) has absolute and good title to the Goods supplied, and at the time of delivery will be free of all liens, security interests or encumbrances of any kind against the Goods;
- (iii) will comply with all applicable Laws of any jurisdiction from or in which the Goods or Services are provided or received, including Laws about export control, import, customs and economic sanctions, anti-corruption, anti-bribery, patents, trademarks, copyrights, tax, food safety, labour and labour safety, environment, consumer rights, labelling, electrical standards;
- (iv) will comply with all voluntary industry standards, codes or other obligations, e.g.: applicable health and safety standards for manufacturing operations, and
- (v) the supply of the Goods and performance of the Services will not give rise to any breach by any person of any Laws or third party rights.

Without prejudice to any other right or remedy which Purchaser may have, under this Contract, the Master Agreement (if existing) or the applicable Laws, if any Good or Service fails to meet any warranty contained in this Contract (even after acceptance, payment or use of the Goods or Services by Purchaser), or the Supplier fails to comply with any of the terms or warranties under this Contract, Purchaser may, at its option, exercise one or more of the following remedies:

- (i) cancel this Contract or the applicable PO, in whole or in part;
- (ii) ask Supplier to repair the non-conformity, faults or defects, at Supplier's expense;
- (iii) seek a reduction of the purchase price;
- (iv) reject the Goods or Services as provided in Article 13;
- (v) refuse to accept any further deliveries of the Goods or performance of the Services;
- (vi) carry out at Supplier's expense any work necessary to make the Goods or the Services compliant with the Contract, and
- (vii) claim any and all related damages.

13. Inspection and Rejection. Notwithstanding any prior payment, all Goods and Services are subject to inspection and testing after arrival at the ultimate destination, delivery or performance, as the case may be, and in the case of the Goods, if they are to be incorporated into an operating facility, the inspection and testing of the Goods may be made under operating conditions after the Goods have been installed. If specific acceptance testing procedures or acceptance criteria are specified or referenced on the face of this Contract, then Supplier and Purchaser (or either of them, as applicable), will carry out the activities related to the acceptance procedures. If during such testing period, the Goods are not performing in accordance with the acceptance criteria, Supplier will, at no expense to Purchaser, and with prior agreement of the Purchaser make necessary and appropriate corrections, adjustments or modifications to the Goods in order to bring them into compliance. If upon inspection or testing, the Goods or Services or any portions thereof are found to be non-conforming,

unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any guarantees or warranties or the applicable Specifications or fail to meet any other requirements of Purchaser or of this Contract, then without prejudice to any other rights or remedies, Purchaser may reject the Goods or the Services (in whole or in part) and return them to Supplier at the risk and cost of Supplier on the basis that a full refund for the Goods or Services so returned will be paid forthwith by Supplier. Also, Purchaser may exercise one or more of the following remedies:

- (i) cancel this Contract or the applicable PO, in whole or in part;
- (ii) seek a reduction of the purchase price if the rejection is partial;
- (iii) refuse to accept any further deliveries of the Goods or performance of the Services;
- (iv) carry out at Supplier's expense any work necessary to make the Goods or the Services compliant with the Contract, or
- (v) claim any and all related damages. Further legal claims of the Purchaser remain unaffected.

Neither the inspection, nor failure to make inspection, nor acceptance or payment for Goods or Services will release Supplier from any of the warranties or other provisions of this Contract nor impair Purchaser's right to reject non-conforming Goods or Services or make claims in connection with the non-conforming Goods or Services.

Any Goods (which, for purposes of this provision, will include any work in process), rejected by Purchaser, in Supplier's possession or control, and determined by Purchaser not to be re-conditionable or salvageable will be disposed of by Supplier at Supplier's cost and expense in a manner which will absolutely preclude re-use for human or, unless Purchaser otherwise consents, animal consumption. If Purchaser determines that any such Goods (or work in process) are re-conditionable or salvageable, Supplier will remove all Purchaser identification and dispose of the same as mutually agreed in writing between Purchaser and Supplier. Supplier will immediately withdraw rejected Goods from Purchaser's premises, unless Supplier specifically requests for temporary storage, which will be at the expense and risk of Supplier. Purchaser reserves the right to charge storage fees for rejected Goods not collected within 1 week from notification of rejection.

Any of the activities related to reception, inspection, testing, acceptance or rejection mentioned above may be performed by an Affiliate of Purchaser, or by any third party designated by Purchaser, and will be considered and have the same effect as if performed by Purchaser.

14. Traceability of ingredients and Goods. Supplier will at all times be able to provide details and data regarding the exact origin of the ingredients used to produce the Goods and the movement of the Goods, in order to, in the event of quality issues, respectively, ensure traceability of ingredients used and guarantee an efficient recall action of Goods.

15. Product recall. In the event that Supplier becomes aware of the existence of any non-conformity or defect relating to any Goods which have left the control of Supplier and Supplier reasonably believes that such defect or non-conformity either creates or is likely to give rise to

a risk to the health or safety of consumers, possibility of action by enforcement authorities, or a risk of adverse publicity or public dispute for Purchaser or its Affiliates, the following provisions will apply:

- (i) Supplier will immediately, upon becoming aware of the problem, notify Purchaser. Any such notification will include, as a minimum: a) the identity and quantity of the Goods involved, b) any relevant coding information (if existing), c) any other relevant information, which may be of assistance in tracing the Goods (or the products containing the Goods);
- (ii) representatives of Supplier and Purchaser will meet as soon as practicable for the purpose of agreeing the measures to be taken by Supplier in order to remedy issues arising from such defects or non-conformity;
- (iii) Purchaser will be entitled to demand the cessation of the production of the Goods forthwith, to require the withdrawal of the Goods and to require the destruction of the Goods. Not only for the reasons described above, in the event that Purchaser at its own discretion initiates a recall, withdrawal or destruction of Goods (or products containing the Goods), or a recall is ordered or recommended by governmental authorities having jurisdiction, Supplier will fully cooperate and share all information with Purchaser. All recall related expenses (e.g. cost of transporting, storing, managing and destroying the recalled product), as well as all the damages incurred by Purchaser, its Affiliates or affected third parties, will be borne and compensated by Supplier to the extent the cause of the measure, problem or recall is due to any breach by Supplier of its obligations or warranties hereunder or any negligent or unlawful act of Supplier, its employees, agents, contractors or representatives.

16. Purchaser's materials. Any material owned by Purchaser or any of its Affiliates which Purchaser may deliver to Supplier or which may come to Supplier's possession in relation to this Contract will remain at all times the exclusive property of Purchaser. These materials may include any kind of print tools or matrix, graphics, drawings, models, photographs, software, equipment, packaging, products, prototypes, samples, raw materials, ingredients, promotional materials. Supplier will:

- (i) exclusively use the materials to perform its obligations under this Contract;
- (ii) return them to Purchaser upon request or upon completion or termination of this Contract;
- (iii) hold them in safe custody and identified as Purchaser's property, at Supplier's own risk and not transfer or otherwise disclose them to any third party;
- (iv) maintain the materials in good condition until returned to Purchaser,
- (v) not dispose of them or use them other than in accordance with Purchaser's written instructions, and
- (vi) not reverse engineer, decompile, fractionate, replicate, reprocess or partition them or cause them to be reverse engineered, decompiled, fractionated, replicated, reprocessed or partitioned.

17. Intellectual property. Supplier understands that any IPR owned by, or licensed to, Purchaser or its Affiliates ("Purchaser's IPR") are valuable assets. Any Purchaser's IPR shared with Supplier in connection with this Contract will be used by Supplier only on Goods or Services provided under this Contract. In order to ensure preservation of Purchaser's IPR, Supplier undertakes not to sell or otherwise distribute Goods or deliverables bought under this Contract that use any Purchaser's IPR to anyone other than Purchaser or its Affiliates without Purchaser's prior written approval. No provision of this Contract will be interpreted as granting any explicit or implicit license, title or other right over Purchaser's IPR to the benefit of the Supplier, unless established in this Contract or otherwise expressly agreed in writing. Supplier agrees that all IPR developed in the performance of this Contract or at the request of Purchaser, related to Purchaser's products, formulation, packaging, technology, processes, Specifications or other Purchaser's IPR or Confidential Information, including any improvements or modifications thereof ("Developed IPR") will be the exclusive property of Purchaser or its respective Affiliates (such rights to include, without limitation, the right to register protection for that Developed IPR). To the extent the Developed IPR does not vest automatically in Purchaser, Supplier hereby irrevocably assigns to Purchaser (or its respective Affiliates) all right, title and interest in and to all such Developed IPR, and will execute, and will cause its employees to execute, all documents which may be necessary to give effect to this provision.

Supplier agrees to provide to Purchaser in writing full and complete information and documents related to the Developed IPR, in the format and language specified by Purchaser. Supplier undertakes:

- (i) not to use directly or indirectly the Developed IPR for any purpose other than the performance of this Contract, unless it has obtained the prior written consent of the Purchaser, and
- (ii) to keep the Developed IPR confidential and not to register any protection for the Developed IPR.

Supplier warrants that any deliverables generated, made, conceived, developed or written by or on behalf of Supplier (either individually or in collaboration with others) under this Contract, including any tangible and intangible work product, sketches, drawings, designs, pictures, films, photos, images, recordings, videos, music, plans, technical drawings, inventions, discoveries, improvements, know-how, computer programs, including any source and object codes, and any other creation or documentation, will be original work, and that all works generated and the provision of the Goods or the Services under this Contract and the use or exploitation of the deliverables by Purchaser or its Affiliates will not infringe any rights of third parties including any IPR belonging to third parties. Any IPR owned by, or licensed to, Supplier or its Affiliates prior to this Contract or developed independently from this Contract ("Supplier's IPR") is and will remain the exclusive ownership of the Supplier. If any Supplier's IPR, including any software, source code or object code, are necessary for the utilization of the Goods or the Services by Purchaser or its Affiliates, Supplier hereby grants Purchaser and its Affiliates a worldwide, non-exclusive, fully paid up, irrevocable and perpetual license to use such rights to the extent necessary to fully exploit or use the Goods or the Services.

Supplier represents that it has fully investigated all Specifications and, based upon such investigation and its past experience and superior knowledge with respect to the Goods or the Services, Supplier has determined that the production thereof in accordance with such Specifications or the use or exploitation thereof will not infringe any IPR of any third party. Supplier will indemnify and hold Purchaser and its stockholders, Affiliates, officers, directors, agents and employees (the "Purchaser Indemnitees") harmless from any and all claims, demands, costs and liabilities, including attorneys' fees and legal expenses, arising out of any infringement or claim of infringement of third party IPR. If Purchaser at its own discretion so requires, Supplier will assume, at Supplier's cost, the defence of Purchaser and Purchaser Indemnitees. In no event will Purchaser or its Affiliates be liable to Supplier for any IPR infringement or claim thereof; and, in the event Purchaser or its Affiliates is or are enjoined from the operation, use or sale of the Goods or the Services pertaining thereto or to any part thereof covered by this Contract, Supplier will, at its sole expense, take all responsible steps possible to procure for Purchaser and its Affiliates the right to operate, use and sell the Goods or the Services referred above. If Supplier cannot so procure the aforesaid rights within a reasonable time, Supplier will then promptly, at Supplier's sole expense:

- (i) modify said Goods or Services, or any part thereof, so as to avoid infringement of any IPR; or
- (ii) replace said Goods or Services or any part thereof with Goods or Services which do not infringe or violate any such IPR; or
- (iii) remove said Goods or Services or any part thereof, and refund any payment made by Purchaser to Supplier and any transportation costs and other expenses that may have been paid or incurred by Purchaser in connection with the Goods or the Services, or any part thereof, so removed. In the case where it would not be possible, Purchaser may terminate the Contract, without prejudice to the rights previously acquired and to the damages and interests to which Purchaser and Purchaser Indemnitees could be entitled to.

Supplier will ensure that rejected, waste and scrap materials that bear any Purchaser's IPR (including packaging) will be destroyed and disposed of according to Purchaser's instructions, in a manner which will absolutely preclude re-use. Supplier will not sell packaging materials bearing the Purchaser's IPR to third parties or use them for any purpose other than the performance of its obligations under this Contract. Unauthorized sales or use of said packaging material is expressly forbidden.

18. Term and Termination. This Contract will be valid and effective during the term set forth in the face of this Contract. In addition to other causes mentioned in this Contract, Purchaser will have the right to terminate this Contract and any or all other Contracts between Purchaser and Supplier for any of the following specific reasons:

- (i) insolvency or bankruptcy of Supplier;
- (ii) failure of Supplier to perform or comply with any provision of this Contract including a breach of any of the warranties set forth in this Contract which is incapable of remedy or

which, if capable of remedy, has not been remedied within 15 working days of service of a written notice from Purchaser specifying the breach and requiring it to be remedied;

- (iii) if, in Purchaser's opinion, Supplier damages or may damage Purchaser's brands, goodwill or reputation or should Purchaser be dissatisfied on reasonable grounds with the way the Supplier is handling its business and if Supplier does not take, in Purchaser's sole opinion, steps necessary to remedy such situation within the designated period of time after notice thereof is given by Purchaser in writing;
- (iv) if Purchaser decides to modify its sourcing strategy, business model or requirements, or
- (v) if Supplier disposes in whole or in part of its business (other than to its Affiliate) or if there is a publicly announced proposed or already consummated direct or indirect change of control of the legal or beneficial ownership of Supplier. This Contract may also be terminated by Purchaser, for convenience and "without cause", upon giving Supplier at least 30 days prior written notice. Purchaser will have no liability or obligation whatsoever to Supplier by reason of or resulting from such termination; but, at Purchaser's sole discretion, Purchaser may pay Supplier its actual direct out-of-pocket costs of performance hereunder to the date of such termination, as approved by Purchaser, in which event, the finished Goods, completed Services or any work-in-process as of the date of termination will become the property of Purchaser and Supplier will safely hold the same for a reasonable period of time subject to receipt of Purchaser's written shipping or other disposition instructions. The rights of termination mentioned above will be in addition to Purchaser's other legal rights and recourses whether set forth in this Contract or not, including those established in the Master Agreement (if existing).

In the event of termination of the Contract, regardless of its cause, Supplier will provide such assistance as Purchaser reasonably requires to allow any successor appointed by Purchaser to take over Supplier's obligations under this Contract. The termination of this Contract, regardless of its cause, will be without prejudice to the rights and duties of Purchaser accrued prior to termination. The provisions of this Contract which expressly or implicitly have effect after termination will continue to be enforceable notwithstanding termination or expiration.

Any provisions of this Contract that by their nature extend beyond termination of this Contract will survive such termination.

- 19. Indemnity.** Supplier will indemnify and hold Purchaser and Purchaser Indemnitees harmless from any and all claims (including of federal, national, state, provincial or local governments or any agencies or subdivisions thereof), demands, causes of action, losses, damages, liabilities, expenses, reasonable attorney fees or obligations of any kind whatsoever including, but not limited to, damage or destruction of property, injury or death, for loss of profits, loss of production, production interruptions and contract penalties, resulting from or connected with, directly or indirectly, in whole or in part, Supplier's performance under this Contract or resulting from any default or other breach by Supplier (by action or omission) of its obligations or warranties under this Contract. If Purchaser so requires at its own discretion, Supplier will assume, at Supplier's cost, the defence of Purchaser and Purchaser Indemnitees.

20. Insurance. Supplier will maintain, throughout the term of Supplier's performance under this Contract, general liability insurance, including product liability insurance, other insurance adequately covering Supplier's liability under this Contract, or as provided on the face of this Contract, as well as any insurance required by the applicable Laws. All insurance must be obtained by Supplier from reputable and solvent insurance companies. Upon request by Purchaser, Supplier will promptly provide Purchaser with the applicable certificates of insurance, as well as with proof of payment of the premiums. No insurance coverage will release Supplier from its liabilities, nor be considered or construed as limitations of such liabilities.

21. Force Majeure. Contingency planning. Neither Purchaser nor Supplier will be liable for the failure to perform or delay in the performance of its obligations under this Contract, to the extent such failure or delay is caused by or results from a Force Majeure Event. The party affected by the Force Majeure Event will immediately notify the other party using the fastest possible means of communication available to it, describing the circumstances of the Force Majeure Event, and will promptly notify the other party when the Force Majeure Event (or its impact on such party) has been abated. The affected party will not be held liable by the other party for such non-performance or delay as long as the fact of the occurrence of such Force Majeure Event(s) is duly proven or is reasonably provable. If Supplier's performance is delayed or hindered due to a Force Majeure Event, Purchaser will not be obligated to pay any price to Supplier in respect of any Goods or Services not actually supplied or rendered. In case of a Force Majeure Event, Purchaser will have the right to defer the date of delivery of the Goods or the Services or to cancel this Contract or reduce the volume of Goods or amount of Services. Purchaser will not be liable to Supplier for any costs or expenses incurred by Supplier as a result of any Force Majeure Event. However, if the delay in performance exceeds 30 days, the party awaiting performance will be permitted to terminate this Contract upon 5 days' prior written notice to the other party, with no further obligation to the party claiming excusable delay. The failure, default or delay will not be excused if:

- (i) the prevention of the same is an obligation under this Contract;
- (ii) the non-performing party or its personnel are at fault in causing the delay or failure to perform;
- (iii) the default or delay could have been anticipated, prepared for, or prevented by the use of reasonable precautions commonly employed by persons and entities in the business of the affected party; and
- (iv) the delay or failure to perform can be reasonably circumvented by the non-performing party through the use of alternate sources, workaround plans or other means.

22. Personnel. Supplier will be exclusively liable for all legal and labour obligations related to the engagement of its own personnel and its subcontractor's personnel, and such personnel will have no relationship whatsoever with Purchaser or its representatives. Supplier assumes fully and exclusively the liability in case any of its employees or its subcontractors' employees files a claim, accusation or lawsuit related to labour, civil or any other kind of matters against Purchaser or Purchaser Indemnites. Additionally, Supplier acknowledges specifically that

Purchaser and Purchaser Indemnitees will not be liable for any accidents of any kind, nor for damages, professional diseases or death of the personnel of Supplier or its subcontractors' appointed to carry out the activities related to the performance of this Contract. Where specific Supplier personnel has been designated in the Contract to perform the Services, such individuals may not be substituted by Supplier without the prior written approval of Purchaser.

23. Confidentiality. Supplier acknowledges that in the course of providing the Goods or the Services hereunder, it may be exposed to or receive certain information deemed to be confidential or proprietary by Purchaser or its Affiliates (or their suppliers or consultants), including but not limited to the Specifications, information relating to Purchaser's manufacturing processes, equipment and know-how, technologies, ingredients, recipes, procedures and standards, information concerning the production and packaging of Purchaser's products or other information (hereinafter collectively referred to as #Confidential Information#). Supplier agrees that all such Confidential Information will be retained by Supplier and its personnel, agents and representatives as strictly confidential, not disclosed to any third party and will only be used in connection with the performance of this Contract. Supplier will ensure that such personnel, agents, representatives or subcontractors are subject to the same obligations of confidentiality. Supplier will not disclose to anyone not connected with Purchaser any Confidential Information obtained by it while serving as a supplier to Purchaser, unless and only to the extent compelled by order of a court or regulatory body of competent jurisdiction. Supplier will promptly notify Purchaser of any such order to allow Purchaser an opportunity to interpose any objections it may have to such disclosure. Supplier will restrict the disclosure of the Confidential Information within its own organization to those persons who are directly concerned therewith and who have been informed of Supplier's obligations hereunder. Supplier agrees that upon ceasing to serve as a supplier to Purchaser, or when requested by Purchaser, Supplier will return to Purchaser and not retain any memoranda of Confidential Information, or any drawings, blueprints, or other such reproductions. In the absence of written authorization from Purchaser, Supplier must not mention its business relations with Purchaser or use Purchaser's IPR or Purchaser's name in any advertising, promotion video, website, leaflet or publication, or in any other form. Supplier and its employees will maintain the confidentiality of passwords, if any, for information system access provided to them by Purchaser. The sharing of passwords is strictly prohibited. Supplier will not allow any photographs, negatives, cine films, video recordings, copies, sketches or notes to be made of Purchaser's plant, equipment, products or processes or any part thereof. The provisions of this Article will survive the expiration or termination of this Contract for a period of 10 years.

24. Data Privacy. Supplier will comply at all times with all applicable data protection Laws, and in particular will implement appropriate technical and organizational measures and adequate security programs and procedures to protect any personal data provided by Purchaser against accidental, unauthorised or unlawful loss, alteration, disclosure, access or processing. You will find comprehensive information about our privacy practices and standards on handling personal data under <https://www.nestle.at/info/datenschutzbestimmungen>

25. Audit rights. Purchaser will be entitled on reasonable notice to Supplier to access by itself or its representatives (including authorized third party) relevant Supplier sites where Goods are being processed, produced or packaged, or Services are being performed, for the purpose of

ensuring Supplier's compliance with this Contract, the applicable Laws and the Nestlé policies mentioned in Article 26. Supplier will make available on such occasions its applicable written records, grant Purchaser access to relevant raw materials, packaging materials, supplies and associated production and warehousing facilities. Purchaser and its representatives will be entitled to monitor production procedures during working hours and to take samples. The audits will in no way release Supplier from its obligations or liabilities. Prior notice will not be necessary when public health or food safety are at risk. If an audit reveals that the Supplier has not fulfilled its obligations, responsibilities, warranties or representations, the Purchaser may grant the Supplier a reasonable grace period to remedy the audit findings. If the Supplier fails to remedy the findings within the specified period, the Purchaser shall be entitled to withdraw from the purchase order for cause; further legal claims of the Purchaser shall remain unaffected. The setting of a deadline is dispensable if:

- (i) the Supplier seriously and finally refuses to remedy the defects; or
- (ii) special circumstances exist which, after weighing the interests of both parties, entitle the Supplier to withdraw from the contract immediately. In order to protect its IPR, Purchaser shall be entitled to monitor the status of packaging materials bearing IPR, designs and printing tools in the possession of Supplier or its subcontractors. Supplier recognizes Purchaser's right to enter and inspect Supplier's and its subcontractors' facilities and premises without prior notice for the above purposes.

26. Nestlé policies. The Supplier confirms that it has carefully read and understood the current version of the Nestlé Responsible Sourcing Code (as published on www.nestle.com/aboutus/suppliers) as well as any other guidelines communicated to it from time to time by the Purchaser. Supplier shall ensure that all of its suppliers comply with the above guidelines. Supplier will complete, sign and return to Purchaser a copy of the Nestlé Responsible Sourcing Code and agrees to comply with the requirements of the #Nestlé Responsible Sourcing Program#, which requires Supplier to provide Purchaser with a #SMETA 4 Pillars# audit report (published on <http://www.sedexglobal.com/ethical-audits/smeta>) or similar evaluation approved by Purchaser upon Purchaser's request.

27. Taxes. Unless otherwise agreed in writing by Purchaser the prices in this Contract will be exclusive of VAT but inclusive of all other charges and taxes. Inclusion or exclusion of customs duties will depend on the applicable Incoterm. Supplier will provide Purchaser with a VAT valid and formally correct invoice to enable Purchaser to claim back VAT, if any. Purchaser will use reasonable efforts to make sure that any taxes withheld are minimized to the extent possible under the applicable Laws and will provide all the necessary documents to enable Supplier to claim the withholding tax refund under the applicable tax treaty, if any. Supplier will be responsible for any withholding tax that it is unable to recover. For the purposes of this paragraph, withholding taxes are defined as any withholding tax or other deductions and obligations imposed by whatever legal, governmental or other authority to payments made by Purchaser to Supplier.

28. Legal succession. The Purchaser shall be entitled to transfer rights and obligations under the contractual relationship with Supplier to another affiliated company. The Supplier shall not be entitled to terminate the Contract due to such a transfer.

29. Notices. Any notice or other communication required or permitted to be given pursuant to this Contract will be deemed to have been sufficiently given if in writing and addressed to the domiciles indicated on the face of this Contract. Purchaser and Supplier may, by notice as aforesaid, designate a different address for notices or other communications intended for it.

30. Applicable law and jurisdiction. This Contract will be governed by and construed in accordance with the laws of Austria excluding its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Contract. In case the Master Agreement mentioned in Article 1 has been signed by Affiliates of both Purchaser and Supplier, or by Supplier and Affiliates of Purchaser, or by Purchaser and Affiliates of Supplier, any dispute under this Contract between Purchaser and Supplier will be escalated to the respective Affiliates before initiating the procedures mentioned in the following paragraph, and they will only initiate those procedures in case no agreement is reached through direct negotiation between the referred Affiliates. The sole jurisdiction for any dispute arising out of or in connection with the Contract or the POs will be the competent courts in Vienna, Austria. The prevailing party in any dispute will be entitled to reasonable attorneys' fees and court and mediation costs.

31. Miscellanea.

- (i) This Contract may be modified only if agreed to in writing by both Purchaser and Supplier. In the event there is a conflict between the terms and conditions on the face of the Contract and those on this document, the terms on the face will control. In the event of conflict between terms and conditions on the face hereof (PO) this Contract (or their respective terms and conditions) the terms and conditions on the face hereof (PO) will control;
- (ii) The fulfilment of the Contract by the Purchaser is subject to the condition that no obstacles due to national or international regulations of foreign trade law as well as no embargos or other sanctions prevent the fulfilment.
- (iii) The invalidity, in whole or in part, of any provision of this Contract will not affect the validity or enforceability of any other of its provisions. The invalid provision shall be replaced by a provision that comes as close as possible in economic terms to the meaning and purpose of the invalid provision in a legally effective manner. Any gaps in the Contract shall be filled in the same way;
- (iv) Nothing in this Contract is intended or will be deemed to establish any partnership or joint venture between Purchaser and Supplier, constitute Supplier the agent of Purchaser or its Affiliates, nor authorise Supplier to make or enter into any commitments for or on behalf of Purchaser;
- (v) The waiver by Purchaser of any term, condition or provision herein stated will not be construed to be a waiver of any other term, condition or provision hereof, nor will such waiver be deemed a waiver of subsequent breach of the same term, condition or provision, nor will it be deemed a waiver of any provision in any subsequent order;
- (vi) Supplier will not delegate any duties, or assign or transfer any rights or claims under the Contract without the prior written consent of Purchaser, and any such delegation,

assignment or transfer without such prior written consent will be null and void. Any consent from Purchaser to such transfer will in no way relieve Supplier of its responsibilities. Purchaser may assign, transfer or delegate its rights and obligations under this Contract, including its proprietary rights, in whole or part, as well as its position as a party, to any of its Affiliates, now or hereinafter existing, with previous notice to Supplier;

- (vii) Supplier will at all times be solely responsible for the acts or omissions of its agents, subcontractors and sub-tier suppliers and will assume sole responsibility for their performance. Supplier will manage its agents, subcontractors and sub-tier suppliers, enforce their compliance with Purchaser's standards and purchase materials, pay, and resolve all disputes with them;
- (viii) For work on Purchaser's premises, Supplier will abide by Purchaser's safety and security rules and regulations then in effect for said premises. Any failure by Supplier's personnel to do so may result in Purchaser instructing Supplier immediately to stop the work or remove such personnel from Purchaser's premises and Supplier will provide a suitable replacement at no extra cost to Purchaser. Supplier will not make the time lost due to this situation the subject of a claim for extension of time or for additional costs or damages by Supplier. Supplier will keep the premises and work free and clear of all liens, and the work will remain at Supplier's risk prior to written acceptance by Purchaser;
- (ix) Purchaser hereby reserves all its other legal or equitable rights and remedies;
- (x) If Supplier is part of a partnership or comprise more than one entity, Supplier's liabilities hereunder will be joint and several among those entities. Any notice served on one will be binding on them all;
- (xi) Supplier warrants that there are no commitments or other circumstances that will inhibit it from providing Services or delivering the Goods to Purchaser (including any conflicts of interest) as set out herein. Supplier will notify Purchaser, in writing, immediately upon becoming aware of the existence or possibility, of a conflict of interest. Purchaser will decide, at its sole discretion, the course of action after said notice;
- (xii) Supplier will inform Purchaser in writing of: a) any breach or incident related to environmental Laws or environment protection, occurred during the performance of this Contract, and b) any inspection or administrative procedure related to Supplier's activity or its impact to the environment, which may have any effect or consequence on the execution of this Contract;
- (xiii) Nothing herein will be construed as granting exclusivity to Supplier in the supply of Goods or Services.