

**General Terms and Conditions of Sale, Supply and Business („GTC“) in the version of 01.01.2016
of S. Spitz GmbH, FN 459290b („SPITZ)**

1. Area of validity

- 1.1 These GTC apply to all business relationships of SPITZ and are the basis for **offers, deliveries, payments, legal acts, legal transactions and other services from SPITZ**, in particular the supply of products. These GTC apply to all – even future – business relations with the customer even if no reference is made to these in individual cases.
- 1.2 Deviating **terms and conditions of the customer** shall not obligate SPITZ even when SPITZ does not object to them once again when concluding the contract and shall apply only and insofar as SPITZ has agreed to their validity in writing. In the case of **contradictions** in the basic principles of the contract, the following order of priority shall apply: (i) any special agreements, provided that these are confirmed in writing by SPITZ; (ii) these GTC from SPITZ (as well as the conditions referred to in these GTC); (iii) legal provisions but not, however, contractual standards (e.g. ÖNORMEN = AUSTRIAN STANDARDS).

2. Conclusion of contract* Content of contract

- 2.1 **Offers from SPITZ** are non-binding and are to be seen merely as an invitation to the customer to place an order.
- 2.2 **Orders** from the customer are binding for the customer as of their arrival at SPITZ. SPITZ can accept within a period of **two weeks** (commitment period) by (i) a written **order confirmation** or (ii) by starting with the **provision of the service**. Silence on the part of SPITZ shall moreover not constitute consent. SPITZ reserves the right at its own discretion, **to only partially accept respectively perform orders** from the customer in the case of divisibility of the service; in this case an order only comes about to the extent of the service part accepted by SPITZ without entitling the customer to any claims herefrom.
- 2.3 SPITZ reserves the right to **modify** its product at any time (e.g. layout, recipe, flavour, packaging etc.). As far as individual characteristics were not expressly assured by SPITZ, this also applies to changes deemed reasonable for the customer even after the order has been placed; deviations of this kind do not represent an error or defect in the product.

3. Prices • Costs

- 3.1 **Prices** indicated by SPITZ are to be understood as ex works (EXW) in EURO plus statutory value added tax and other levies of the respective statutory amount.
- 3.2 If there is an order which deviates from the (total) offer, SPITZ reserves the right to make corresponding **price changes**. The prices are based on the (production) costs (material prices, wages, overhead costs etc.) at the time of the first offer. Even after the conclusion of the contract, SPITZ is authorised to collect from the customer increases in the production costs as well as increased or newly introduced fees and levies.
- 3.3 As long as there is no other legal obligation, **packaging** will be taken back only if expressly agreed.

4. Invoicing* Conditions of payment

- 4.1 SPITZ is entitled to issue partial invoices at its own discretion. Provided that in individual cases no special **conditions of payment** were agreed, the invoice amount is immediately **due** upon receipt of the invoice clear of any charges and deductions so that payment is received within three banking days by means of an irrevocable credit to the bank account of SPITZ. In case of default of payment, SPITZ is entitled to charge default interest in the amount of 8% points above the basic interest rate.
- 4.2 The customer is not entitled to assert **rights of retention or other rights to refuse performance** or to **assert** counter-claims except for claims expressly recognised in writing by SPITZ or by a legally binding court decision.
- 4.3 Notwithstanding any other provisions or intended purpose to the contrary from the customer SPITZ is entitled to offset **payments against** accounts receivable at its own discretion.
- 4.4 If the customer is **in default** with an agreed payment or other performance, SPITZ is entitled at its choice - without prejudice to any other rights - (i) to postpone the fulfilment of its own obligations or other services until the outstanding payments or other performances have been effected, (ii) to demand immediate payment of the outstanding purchasing price (failure to meet deadline) or (iii) to withdraw from the contract in case an adequate period of grace is disregarded.

5. Delivery • Risk assumption

- 5.1 **Deliveries** are performed- provided nothing is agreed to the contrary - ex works/warehouse of SPITZ. When it comes to services from SPITZ, which do not constitute a delivery or a part of this, the place of fulfilment is where the service is provided. For deliveries ex works/warehouse the delivery is **fulfilled** with the notification of provision of the goods. The customer must inspect and take over the goods immediately after receipt of the notification of provision at the agreed place of acceptance. If the customer expressly or silently renounces the inspection of the goods, the supplied item shall be deemed as properly delivered and accepted upon leaving the factory/warehouse.
- 5.2 The **risk** for a (partial) performance is transferred to the customer at the time the performance (fulfilment) is effected. The goods are always transported at **the expense and risk of the customer**, regardless of the pricing agreed for the delivery. SPITZ is not obliged to insure the goods respectively the transportation of the goods. The risk passes to the customer with the handover of the goods to the forwarding agent/freight carrier, at the latest, however, when leaving the factory/warehouse of SPITZ. This also applies when the transportation is performed or organised and/or managed by SPITZ. If there is delay in departure from the factory/warehouse due to circumstances beyond the sphere of SPITZ, the risk passes to the customer with the day of readiness for dispatch. The customer is obliged to immediately accept the goods contractually dispatched or made ready for collection, otherwise the delivery is deemed fulfilled on the day on which the acceptance should have been performed by the customer in accordance with the contract; at this time the risk of accidental destruction and/or deterioration passes in all cases to the customer. The same applies in the case of infringement of the customer's obligation to co-operate and the resulting consequences thereof.
- 5.3 Official and any other necessary **authorisations** from third parties are to be obtained by the customer in good time and at their own responsibility and cost.
- 5.4 SPITZ is entitled to perform **partial and/or advance deliveries** and to charge these correspondingly (separately) by means of partial invoices. SPITZ is entitled to unilaterally **postpone respectively suspend** the fulfilment of the contract, in particular when there are (i) open claims against the customer or (ii) when the economic circumstances of the customer change considerably so that the claim

from SPITZ no longer appears to be sufficiently assured, or (iii) the orderly and/or timely acceptance by the customer is not assured. No claims of whatever kind arise for the customer from this. SPITZ is moreover entitled to make the performance of the service dependent on a sufficient **provision of security** from the customer or from an appropriate **advance payment**.

- 5.5 **Delivery periods** are without obligation unless these are expressly agreed as fixed. Delivery periods begin at the earliest with the date of fulfilment of all of the technical, commercial and/or other prerequisites incumbent on the customer (e.g. advance payment, down payment or security, any authorisations required). Delivery periods only apply unless circumstances unforeseeable or beyond the parties' intention will obstruct, delay or make compliance impossible such as all cases of force majeure; this independent of in which sphere circumstances of this kind occur respectively whether this constitutes an external or internal incident. These circumstances also include war, armed disputes, interventions and prohibitions by authorities, transport-/customs delay, transport damage, a lack of energy/raw materials, missing materials, labour disputes (such as e.g. a lockout or strike) as well as the loss or refusal to deliver by an important subcontractor. These circumstances also entitle the appropriate prolongation of the delivery period (namely at least for the duration of the impediment), even if these occur at the subcontractor's. Moreover circumstances of this kind entitle SPITZ optionally to withdraw from the contract, or to reduce the delivery quantity accordingly.
- 5.6 In any case of delay in acceptance, SPITZ can undertake the **storage of the goods** at the cost of the customer whereby the delivery is considered fulfilled. Reasonable standard market warehouse costs are considered agreed; in the case of storage at a third party's the customer must refund the appropriate and actual storage costs. Thereby the agreed conditions of payment will not be amended. Any claims from SPITZ over and above this remain in any case reserved.
- 5.7. Any **quality tests** etc. agreed upon do not affect the provisions with regard to the place of fulfilment and transfer of risk.

6. Retention of title

- 6.1 The products of SPITZ shall remain the sole **property of SPITZ (goods subject to retention of title=reserved goods)** until fulfilment of all claims of SPITZ arising from the respective contract vis-à-vis the customer even if individual parts have already been paid. Up until this time, the customer is only entitled to sell these, work or process them in the proper course of business until this permission is revoked by SPITZ. A **pledging, assignment as security, renting or other** transfer of the reserved goods is only admissible after the previous written agreement of SPITZ.
- 6.2 In the event of the resale of the reserved goods, the customer assigns to SPITZ even now the **claims** and also future claims as payment with regard to his customer / client arising from the resale until the claims of SPITZ have been settled; the assignment also extends to balance claims which arise within the framework of existing current account relationships or upon termination of relationships of this kind on the part of the customer with his customers/clients. If the reserved goods are resold together with other items without a unit price having been agreed for the reserved goods, then the customer assigns the part of the total price claim to SPITZ with priority over the remaining accounts receivable, which complies with the value of the reserved goods invoiced by SPITZ. The customer is entitled to collect the assigned receivables from the resale until this is revoked; he is, however, not entitled to dispose of the goods in any other way. At the request of SPITZ the customer must make this assignment known to his customer/client and must hand over to SPITZ any documents required to assert his rights vis-à-vis his customer/client and to provide all the necessary information. The customer shall bear all the cost of collection and any interventions. In any case the customer must make a corresponding note in his books and on his invoices about the assignment.
- 6.3 If reserved goods are **processed** by the customer to form a new chattel then this is done for SPITZ without SPITZ being obligated thereby. The new object becomes the property of SPITZ. When processing with items which do not belong to SPITZ, SPITZ acquires co-ownership of the new item in the ratio of the value of the goods subject to retention of title compared to the other goods at the time of processing.
- 6.4 If the customer is in default with his payment obligation as a whole or in part, if there is excessive indebtedness or suspension of payment or if bankruptcy proceedings have been initiated or insolvency proceedings opened, SPITZ is entitled to immediately take all of the goods subject to the retention of title; likewise SPITZ can immediately assert further rights arising from the retention of title; the same applies when the economic circumstances of the customer change in a considerable way.
- 6.5 In the event of seizure through third parties or other access by third parties to the reserved goods, the customer must immediately **report** to Spitz in writing. Moreover the customer is obliged to immediately point out the property right of SPITZ and to assert the property of SPITZ at his own expense and to indemnify and hold SPITZ harmless with regard to all costs for the maintenance and defence of the property.
- 6.6 During the duration of the retention of title, the customer has to treat the reserved goods with care, has to keep them in an orderly condition and has **to insure** them at their full value against all risks, including fire and claims arising from the insurance policies shall be transferred to SPITZ.

7. Warranty

- 7.1 As long as (in particular in these GTC) no other agreements have been made to the contrary, the **legal provisions of warranty** shall apply.
- 7.2 SPITZ warrants the compliance of its goods with the **food regulations** and other pertinent legal and/or governmental **regulations. Guaranteed properties** in the sense of § 922 par. 1 Austrian General Civil Code (ABGB) are only those which are expressly identified and agreed by SPITZ. No warranty claims (or other claims) can be derived from product descriptions from SPITZ (or of a third party), in particular (also) from data in catalogues, brochures, advertising brochures, written and/or verbal statements etc., which have not expressly become an integral part of the contract. If the goods from SPITZ are produced on the basis of recipes, flavour, design descriptions, drawings, models or other **specifications from the customer**, then the liability of SPITZ only extends to the execution as instructed according to the specifications.
- 7.3 The warranty period basically ends with the **Best Before Date (BBD)**, at the latest however after **six months**, provided that no other warranty periods are agreed for individual goods. The warranty period begins with the taking over resp. (with other services which do not constitute goods) the completion (transfer) of the service by SPITZ, otherwise at the latest at the time of risk transfer, in the case of customer's default of acceptance it begins with the notification of readiness for handing over.
- 7.4 A warranty claim is subject to the customer's immediate report and proof (**notice of defects**) in writing about the defects which occurred indicating the type and scope of the defect, at the latest within **five days**. If defects are not notified or not notified in good time, the delivery is seen as fulfilled according to the contract and the customer loses all claims in particular on the grounds of warranty and compensation for damages. Hidden defects can only be asserted within an appropriate period of time depending in particular on the type of service; the aforementioned obligations to notify claims shall apply mutatis mutandis. The customer must give SPITZ the

- opportunity to examine the complaint otherwise the claim will be forfeited. If the examination of a notice of defect reveals that there is **no case of warranty**, SPITZ is entitled to demand reimbursement for all costs and expenses. SPITZ charges the costs of the inspection and the attempted or performed elimination of defects at the actual costs at an appropriate level. If SPITZ rejects the notification of defects in writing, the customer has to assert his warranty claims **by judicial process within six months** otherwise all his warranty claims shall be lost.
- 7.5 The customer must **prove** that the defect was present at the time of transfer. The application of §§ 924, 933b Austrian General Civil Code (ABGB) is excluded.
- 7.6 Any replacement for a (attempted or successful) remedy of defects by the customer himself or by a third party (**substitute performance**) is excluded.
- 7.7 Subject to obligations imposed by law, SPITZ reserves the right to fulfil the guarantee claim at its own option by **improvement, exchange or price reduction**. For improvement respectively exchange, the customer must grant SPITZ to a reasonable extent the time and opportunity required. If he refuses this or if this is shortened in an inappropriate way, SPITZ is released from its warranty respectively the elimination of defects.
- 7.8 Complaints for defects (with the exception of hidden defects) shall only be taken into consideration, if the performance is still at the stage of transfer. Defects due to negligent, improper, careless or incorrect handling or use, failure to observe instructions and requirements or which can be traced to circumstances outside normal operating conditions are **excluded** from any **warranty** and other liability of any kind, for whatever legal reason. This also applies to defects due to materials provided by the customer. SPITZ shall not be liable – for whatever legal reason – for damages due to the actions of third parties or external chemical influences, which are beyond the control of SPITZ.
- 7.9 The **warranty will become invalid** if the customer or a third party which has not been expressly authorised makes any alterations to the delivered goods without the written consent of SPITZ. The repair of defects within the scope of the warranty or attempts of improvement shall not extend the initially agreed warranty period.
- 7.10 If the customer is entitled to a warranty, then he is only entitled to **retain** the cost of necessary improvements but not the total invoice amount.

8. Compensation for damages • Other liability

- 8.1 Subject to provisions to the contrary in these GTC, SPITZ **shall be liable** for damages, which appear in the course of fulfilling the agreement, outside the mandatory application of the Product Liability Law (PHG) only to the extent that wilful intent or gross negligence can be proven against SPITZ or their agents. The liability of SPITZ for simple negligence, compensation for loss of profit, consequential damages and financial losses, unforeseeable damages, damages which do not typically occur, unrealized savings, loss of interest and damages resulting from third party claims against the customer shall be precluded.
- 8.2 In all cases of liability of SPITZ (including those under other provisions of these GTC), the customer shall have to **prove** the liability-causing fault of SPITZ. The applicability of § 1298 clause 2 of the Austrian General Civil Code (ABGB) is expressly excluded.
- 8.3 SPITZ does not assume any **protection obligation** whatsoever towards the actual user of the goods delivered by SPITZ; the intention of SPITZ to enter into a contract is not aimed at arrangements with protective effect in favour of third parties within the scope of the agreement entered into with the customer.
- 8.4 Should the customer himself be held liable on the basis of the **Product Liability Law**, he expressly **waives recourse** herewith towards SPITZ within the meaning of § 12 of the Product Liability Law (PHG). If the customer puts the goods delivered by SPITZ into circulation outside the European Economic Area, he shall undertake to preclude the obligation to provide compensation towards his purchaser pursuant to the Product Liability Law (PHG), provided that this is possible under the applicable laws of the purchaser's state. If this obligation is omitted, the customer shall be obliged to indemnify and hold SPITZ harmless against any claims of whatever kind from third parties based on product liability.
- 8.5 Restrictions of any kind of the obligations arising from the Product Liability Law (PHG) for the customer as well as any restrictions of any kind of the claims for compensations to which SPITZ is entitled under this law or any other provisions shall not be recognised.
- 8.6 Any compensation for damages or other liability of SPITZ in case of **non-compliance with general conditions** for the use and application or regulatory approval requirements shall be precluded. If a product or a component is produced on the basis of **the customer's data**, the latter shall carry the risk of the correctness of the specification and be liable to SPITZ for any damages as well as any patent law-related consequences.
- 8.7 Customer's claims for damages shall **expire** one year from the discovery of the damage and the party at fault.
- 8.8 **Other customer's compensation claims** of whatever type shall be precluded except for gross negligence of SPITZ.

9. (Miscellaneous) Withdrawal from the contract

- 9.1 The **customer** shall only be entitled to **withdraw from the contract** in the case of a delay in delivery attributable to gross negligence on the part of SPITZ and only upon expiry of a reasonable period of grace of at least four weeks established under express threat of contract cancellation. The withdrawal shall be asserted by a registered letter.
- 9.2 If insolvency proceedings are opened over the customer's assets or the request to open the same has been dismissed due to lack of assets, **SPITZ** is entitled to **withdraw from the contract** without prejudice to other provisions of these GTC or without prejudice to any additional rights without setting any period of grace. Furthermore, SPITZ may **withdraw from the contract** and/or reasonably **postpone** performance under the contract for the time being, in particular, if (i) open claims against the customer exist or (ii) the economic situation of the customer has changed essentially so that claims of SPITZ are no longer seen as adequately guaranteed, or (iii) proper and/or timely acceptance cannot be considered as guaranteed by the customer. The customer shall not be entitled to any claims thereupon. SPITZ is moreover entitled to make the performance of the service dependent on sufficient **provision of security** from the customer or from an appropriate **advance payment**.
- 9.3 In case of withdrawal, any **services or partial performances** already rendered shall be invoiced and paid according to contract without prejudice to any additional rights and claims of SPITZ. This shall also apply if the delivery or service has not yet been taken over by the customer and for any preparatory works of SPITZ. Instead, SPITZ shall also have the right to demand restitution of the articles already delivered.

9.4 In any case, withdrawal of SPITZ – including the same under other provisions of these GTC – may only occur in respect of an outstanding part of the service already rendered or to be rendered by SPITZ.

10. Property Rights

- 10.1 If any goods of SPITZ are produced on the basis of recipes, flavours, design descriptions, drawings, models or other **specifications provided by the customer**, the customer shall indemnify and hold SPITZ harmless against any **infringement of property rights**. Any legal costs of SPITZ shall be paid by the customer in advance in an appropriate manner.
- 10.2 **Documents of SPITZ** such as e.g. recipes, flavours, drawings, drafts, diagrams, designs, layouts, pictures, models, information, descriptions and instructions for use, as well as samples, catalogues, brochures, illustrations and the like shall remain the intellectual property of SPITZ (respectively another possible originator) and are subject to relevant legal regulations in terms of reproduction, imitation, competition etc. The documents provided by SPITZ to the customer shall remain the property of the originator and may not, without the consent of SPITZ, be duplicated, nor utilised in any manner nor made accessible to any third parties and shall be returned upon request.
- 10.3 All and any material and intangible **rights to the contractual subject**, in particular, intellectual property, full copyright with all associated rights to any documents and information relinquished within the scope of contract negotiations and fulfilment including warranty, support and maintenance services, shall be held exclusively by SPITZ. This shall also apply if these articles have appeared based on specification and/or resulting from cooperation with the customer, and irrespective of whether a contract will be concluded between SPITZ and the customer. The customer shall not have any exclusive rights to these articles but only the rights stipulated in the GTC.
- 10.4 The customer may not eliminate, change, cover or make unrecognisable in any other way any **marks on the goods** concerning copyrights, trademarks or other property rights of SPITZ. The customer may only translate any of the documentation supplied for commercial purposes with the prior consent of SPITZ.
- 10.5 SPITZ shall assume no liability that the goods will not infringe any intellectual **property rights or (copy-) rights of third parties**. The customer shall immediately inform SPITZ about any claims asserted against himself for such reason. In the event that the customer's rights conflict with the **rights of third parties**, the customer may withdraw from the contract after setting a deadline in writing under threat of contract cancellation, unless SPITZ, within a reasonable period, supplies the customer with a legally unobjectionable possibility for use.
- 10.6 If SPITZ owns any goods for which any **industrial property right or copyright of the customer** exist in part or in full (e.g. right to labels, designs, packaging etc.) and SPITZ is authorised (e.g. by exercising the right to reserve title due to the customer's default in payment) and/or obliged to use these goods (e.g. within the scope of its duty to mitigate damage), the customer hereby grants his irrevocable and gratuitous consent that these goods may be utilised by SPITZ in its own name, for its own account and in any manner. To this effect, the customer shall irrevocably refrain from taking action against SPITZ in relation to the violation of his industrial property rights or copyrights.

11. Export and import licenses

- 11.1 The goods and know-how supplied by SPITZ are intended for use in the country of destination agreed upon with the customer and must **remain** there. The (re-)import/export is only possible upon approval from SPITZ and shall be subject to the foreign trade regulations of the Austrian Republic or another country of destination agreed upon with the customer. The customer must inquire into such regulations himself. Irrespective of whether the customer declares the final destination of the supplied contractual products, it is the customer's own responsibility to obtain any necessary permits from the competent foreign trade authorities before exporting such products.
- 11.2 Any **further delivery** of goods by the customer to third parties, with and without letting SPITZ know, requires the simultaneous transfer of export license conditions. The customer shall be liable to SPITZ for the correct adherence to these conditions.

12. Place of fulfilment • Place of jurisdiction • Applicable law • Assignment prohibition

- 12.1 **Place of fulfilment** for any services, payments and supplies shall be the head office of SPITZ, even if according to the agreement the transfer shall occur in a different place.
- 12.2 **Austrian substantive law** shall exclusively apply to all legal transactions between SPITZ and the customer, subject, in particular, to separate supply contracts and these GTC, excluding the referral standards, in particular, of private international law to the extent that these refer to the application of foreign law. If Austrian Law, in transactions involving foreign countries, provides for the application of special international substantive law also valid in Austria such as e.g. the UN Convention on Contracts for the International Sale of Goods (CISG), then such law shall not apply.
- 12.3 The competent court in the location of the head office of SPITZ is agreed to be the **place of jurisdiction** for any disputes resulting from or in connection with the legal relations with SPITZ. SPITZ shall be, however, entitled to make a claim at any other court that may be competent according to national or international law, in particular, at the court in the location of the customer's head office.
- 12.4 The regulations determined in the foregoing provisions shall also apply if disputes occur regarding the conclusion and/or validity of the contract and/or the effectiveness of the jurisdiction clause.
- 12.5 Without the prior express written consent of SPITZ, the customer shall not be entitled to **transfer** contractual rights and duties from the contract to third parties; this does not apply to the possible assignment of money claims between enterprises from business transactions.

13. Non-disclosure

The customer undertakes to keep in strict confidence any business and trade secrets disclosed to him by SPITZ in any way and form including any information concerning the contractual object irrespective of type and content, and the content of the agreement concluded with the customer. The customer expressly undertakes to impose this non-disclosure obligation on all employees and to take corresponding measures to ensure the compliance and observance thereof.

14. Miscellaneous

- 14.1 The **headings** of the provisions contained in these GTC only serve for structuring purposes and may not be used for the interpretation of these. Should individual provisions hereof become fully or partially **invalid**, this shall not affect the validity of the remaining provisions of these GTC. An invalid provision shall be replaced by another valid provision that comes as close as possible in terms of content and purpose to the invalid provision.

- 14.2 No on-going development of business between SPITZ and the customer and no delay or omission with regard to exercising any right, legal remedy or legal means of SPITZ in accordance with the present GTC shall constitute a **waiver** of such rights. Every right, legal remedy or legal means of SPITZ shall be cumulative and exist as coequal, separate and additional to other legal rights, legal remedies and legal means.
- 14.3 The customer is obliged to inform SPITZ about **the change of their business address** immediately in writing. In the event that this notification is not given, any declarations shall then also count as delivered to the customer if sent to the most recent address made known to SPITZ.
- 14.4 If these GTC are translated from German into any other language, **the German version shall be** deemed decisive and binding, as well as definitive for possible interpretation.