



General Terms and Conditions and Contractual Terms

Agreement between

S. SPITZ GmbH, Gmundner Straße 27, 4800 Attnang-Puchheim

- hereinafter named **Spitz** -

and

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- hereinafter named **the supplier** -

regarding all the supply relations between the parties named above.

Contracts with your company are based solely on these General Terms and Conditions and Contractual Terms besides the framework agreement, specifications and the Logistics Handbook. Any special conditions of sales and supply shall not be recognized on behalf of Spitz. In addition, the legal provisions shall apply exclusively.

Particulars concerning the type and character of the goods and specific framework conditions for the transactions in commodities are to be determined in the respective specification which shall be agreed with the strategic purchasing department of Spitz. The current version of the Logistics Handbook of Spitz is to be consulted for the type and manner of the deliveries of goods.

Messrs. Spitz are particularly interested in the precise and punctual receipt of goods and thus they insist on absolute adherence to the order sizes and dates of delivery. Spitz and the supplier shall agree the points which follow to guarantee deliveries on schedule and for dealing with deliveries which are delayed or incomplete:

1. Once the order has been transmitted respectively the call off has been sent by Spitz to the supplier, the latter checks immediately whether he can perform the order on the desired delivery date respectively within the desired period of time both completely and punctually. Should he be unable to do this contrary to expectations, then he must disagree with Spitz within 24 hours (calculated on the basis of the time in working days) after receiving the order and shall then inform Spitz of a possible delivery date. If the suggested delivery date or suggested quantities are accepted by Spitz, these agreements shall then apply.
2. If the supplier does not disagree with an order for goods in time or not at all, then the order for goods automatically becomes binding both with regard to the articles ordered, the quantities and the supply dates. If the supplier does not then perform the order for goods on the agreed delivery date, or incompletely, he shall be in default of delivery.
3. The supplier commits himself to reaching a weekly supply quota of 98%, that means at least 98% of the pallet units to be supplied to Spitz in a calendar week have to be supplied both in a complete form and on time (on the agreed date of supply respectively within the agreed period of supply).
4. **Contractual penalty:** In the event that the supplier **falls short of the supply quota of 98%** in one calendar week, Spitz is entitled to demand payment of a contractual penalty from the supplier. The level of the contractual penalty goes by the number of pallet units which the supplier did not supply, or supplied incompletely or not on time, in this calendar week and by the number of working days (= possible days for the taking over of goods) by which the supplier is in default for each pallet unit (days of delay in delivery).

For each day of delay in delivery, the contractual penalty equals:

a) In the event of a pallet unit not supplied or not supplied in time:

- 0.3% of the merchandise value of the pallet unit (calculated at net invoice prices),
- not less, however, than € 50,- per pallet unit,
- in any case, however, at the most 5% of the merchandise value of the respective pallet unit.

The upper limit of 5% of the merchandise value precedes the lower limit of € 50.

b) In the event of a pallet unit not supplied in full:

- 0.3% of the merchandise value of the missing goods (calculated at net invoice prices),
- not less, however, than € 10,- per pallet unit,
- in any case, however, at the most 5% of the merchandise value of the missing goods.

The upper limit of 5% of the merchandise value precedes the lower limit of € 10.

a) In the event of a tanker not supplied or not supplied in time:

- 0.3% of the merchandise value of the tanker (calculated at net invoice prices),

Spitz is entitled to demand the contractual penalty up until such time as the respective deliveries of goods are delivered in full. Spitz invoices the supplier for the amount calculated for the contractual penalty. Spitz is authorized to offset each counterclaim from the supplier.

5. Spitz's claim to demand compensation for damages from the supplier as a result of exceeding the supply date (likewise with regard to partial quantities) or for another reason remains unaffected by this. In the same way Spitz – irrespective of other rights – is authorized to withdraw from a contract without any further setting of a deadline. The level of the compensation for damages is calculated as a lump sum as 10% of the buying price, unless the supplier

proves lower (respectively the non-occurrence of damages) damages or Spitz proves higher damages (e.g. as a result of lost output). This applies regardless of whether the supplier is responsible for exceeding the delivery date.

6. With regard to the quality of the goods supplied, the supplier guarantees that the goods offer the character of the merchandise agreed in the contract, in particular the properties named in the respective contract, and are suitable for the purpose of use foreseen in the contract. Furthermore the supplier guarantees that the composition, quality, packaging, and if applicable the declaration and specifications of the goods, comply with the pertinent valid Austrian and EU regulations. In particular the supplier guarantees that the goods comply with the pertinent Austrian and EU standards with regard to toxic substances and maximum amounts of residues including the pertinent secondary laws and regulations as well as all the regulations passed in this connection which serve in particular to protect consumers.

Moreover the supplier guarantees that the goods are free of the rights of third parties and in particular that there are no property rights of third parties nor domestic or foreign proprietary rights or other performance rights with regard to the goods which can be infringed by the performance of the order. In the event that third parties make claims of this kind with regard to goods from Spitz, the supplier agrees to immediately clarify the justification of the claims asserted. Without prejudice to further rights from Spitz, Spitz is authorized to make goods already accepted available again to the supplier at his expense until clarification of the justification of claims and to retain payment of the purchase price.

If the goods do not comply with the previously named guarantees, Spitz is authorized to withdraw from the contract without setting a period of grace and to claim compensation for damages instead of the service. This applies regardless of whether the supplier is responsible for non adherence to the guarantees. The amounts of compensation for damages are regulated as in point 5 of this contract. Spitz has the same right when only partial amounts are supplied instead of the agreed amounts or only parts of the supplies reveal faults.

The supplier cannot assume that after acceptance the goods are approved when the notification of a defect does not take place immediately after its discovery unless the defect is obvious, in this case the defect will be reported in writing to the supplier within a period of a maximum of five working days after its supply. Even if the supplier has assumed no guarantee for the state of the goods, he renounces the plea that Spitz failed to detect defects due to gross negligence.

The supplier is liable with regard to Spitz regardless of fault for damages which result from faulty supplies of goods including the costs of recall campaigns, loss of profit, defense costs and the replacement of any damage to image.

In addition Spitz is entitled to all the rights of the buyer in the event of defects.

7. Spitz is authorized to perform inspections himself or have inspections performed during the regular working hours at the production sites of the goods destined for Spitz with regard to adherence to contractual provisions at the supplier's. Moreover the supplier agrees to the performance of supplier audits by experts mandated by Spitz. The object of the supplier audit ranges to all the conditions relevant to the supply relationship. The supplier shall bear the costs which arise from the supplier audits. As far as the supplier receives information in connection with the goods which leads to doubts about the marketability, he is obliged to clarify this immediately and inform Spitz in detail. If the supplier is not at the same time the manufacturer of the goods, he guarantees the furthering of and adherence to these obligations to his sub-suppliers through to the manufacturer.
8. Spitz is authorized to cancel contracts when there is a considerable deterioration in the economic situation of the supplier after the conclusion of the contract, particularly when there are lasting seizures against him or other execution orders, which could endanger claims from Spitz. The same also applies in the case that the supplier demands the opening of insolvency proceedings or a procedure of this kind is started or rejected due to a lack of assets.
9. The assignment of claims for the supplier with regard to Spitz to third parties is not allowed without the express written consent of Spitz.
10. The supplier is committed to having the regulations valid for Austria for product liability, insurance protection for direct and compound products and to furnish proof of this. Additional agreements can be made with regard to the content and extent of the insurance protection/coverage in individual cases.
11. The duration of this agreement, in particular the General Terms and Conditions and Contractual Terms, commences with this being signed by the parties. This is concluded for the duration of the business relations between Spitz and the supplier.
12. Linz an der Donau, Upper-Austria shall have exclusive jurisdiction.
13. The legal relations between the supplier and Spitz are subject to the law of the Republic of Austria. The provisions of the UN Convention on the International Sale of Goods or arbitration clauses shall not apply.
14. In the event that a provision of this agreement is invalid or ineffective then this shall not affect the validity of the remaining provisions. It is agreed that the non-valid or ineffectual provision is to be reinterpreted or supplemented so that the economic purpose foreseen with the invalid or ineffective provision is achieved in the best possible way. This also applies to any loopholes.



15. Changes or additions to this agreement require the written form. This also applies to the cancellation of the requirement for the former to be in the written form.

16. The parties to this contract agree to treat the content of this agreement confidentially.

Attnang-Puchheim, 30.06.2015

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S. SPITZ GmbH

(Supplier)