



**Unified General Terms and Conditions of Purchase  
of the  
Companies of DMK Deutsches Milchkontor GmbH (DMK-Group)  
May 2022**

**Section 1 - Scope**

1. These Unified Terms and Conditions of Purchase of DMK (“**Terms and Conditions**”) apply to all transactions of the supplier with a company of the DMK Group (hereinafter “DMK”; the acronym DMK is subsequently used both for the DMK Group and for the ordering DMK company), including those conducted in the future, unless expressly agreed otherwise. A list of all companies of the DMK Group to which these Unified Terms and Conditions of Purchase apply is available at [www.dmk.de/companies-of-dmk-group](http://www.dmk.de/companies-of-dmk-group).
2. These Unified Terms and Conditions of Purchase apply exclusively. Terms and conditions of the supplier shall not apply, even if DMK does not object to their validity separately. Deviating or conflicting general terms and conditions of the supplier or contractual partner shall only become part of the contract if and to the extent that DMK has expressly agreed to their validity in writing. These Terms and Conditions also apply exclusively if DMK accepts the delivery and/or service of the supplier without reservation in the knowledge of conflicting, supplementary or deviating terms and conditions of the supplier.
3. If framework agreements or individual agreements have been concluded between DMK and the supplier, these shall take precedence over these Terms and Conditions. Unless more specific regulations have been agreed there, they shall be supplemented by these Terms and Conditions.
4. For the employees of third-party companies employed on DMK premises, the “Instruction on Safety, Order, Environment Protection and Hygiene” of DMK which are current at the time of conclusion of contract apply and form an integral part of the order. Before commencing work on DMK premises, the person responsible for the external company shall receive instruction from the person responsible for DMK. The person responsible for the external company shall sign the External Company Declaration after instruction has been given. The current versions are available at [www.dmk.de/industrial-safety-and-health](http://www.dmk.de/industrial-safety-and-health). The General Works Standard, the Electronics Works Standard and the Mechanics Works Standard of DMK in the version valid at the time of conclusion of contract shall become part of the concluded contract. Upon request of the supplier, DMK shall provide the supplier with the respective current versions.
5. These Terms and Conditions, the aforementioned instruction, the General Works Standard and Electronics and Mechanics Works Standards of DMK apply exclusively to companies in accordance with Section 14 of the German Civil Code (BGB), that is, to those natural or legal persons or partnerships with legal capacity who are acting in the exercise of their commercial or independent professional activity on conclusion of contract.

**Section 2 - Conclusion of contract**

1. Offers from the supplier shall be made in writing or in text form. Offers of the supplier must fully describe the object of delivery/service, list in full all additional products and/or services necessary for safe and economically efficient use of the object of delivery/service by DMK and indicate their price.
2. Goods or components of goods and/or services or components of services that are not listed in the supplier’s offer, but which are essential for safe operation or appropriate use of the goods and/or services in accordance with the agreed characteristics, are considered to be an integral part of the object of delivery and/or service and are due from the supplier together with said object.
3. The supplier must expressly point out in writing or in text form the dangers, risks to the environment and potential breaches of third party rights associated with the goods supplied or provision of the



agreed service and the necessity of any special treatment of the goods (in particular for storage) in its offer or on becoming aware of them for the first time after the offer has been made.

4. A contract is concluded by accepting the supplier's offer (purchase order). As far as DMK is concerned, only written purchase orders or orders in text form with its sender ID are valid. The supplier shall confirm the purchase order in writing or in text form within 5 bank working days (at its registered office) of receipt of the order, or within 3 bank working days (at its registered office) if DMK orders via an electronic ordering platform, whereby receipt of the confirmation by DMK is definitive. After expiry of this period, DMK is entitled to revoke its purchase order in the absence of any other agreement. Claims of the supplier due to an effective cancellation made for this reason are excluded; in the event of cancellation of the purchase order by DMK, no contract has been concluded.
5. One copy of the order confirmation shall be provided. Unless otherwise expressly agreed, the submission of offers and cost estimates by the supplier is free of charge and without obligation for DMK.
6. Insofar as there are obvious mistakes, spelling or calculation errors or errors recognised by the supplier in the purchase order of DMK or the documents or data on which it is based, they are without obligation for DMK. In such cases, the supplier is obliged to inform DMK of the corresponding errors in writing or in text form, so that DMK is in a position to correct and revise its purchase order. If documents clearly required were not submitted with the purchase order, this obligation applies accordingly.
7. Changes and additions to DMK's purchase orders shall be made in writing or in text form. Silence from DMK about offers, requests or other declarations of the supplier shall be deemed to constitute consent only if this has been expressly agreed in writing or in text form. The content of the purchase order is exclusively definitive for the order. The supplier shall immediately notify DMK in writing or in text form of changes or additions to the scope of the contract, the necessity of which becomes apparent only when the contract is being executed. Such changes and additions shall only become legally effective with the express consent of DMK.
8. Within the scope of the Act to Strengthen the Organisation and Supply Chains in the Agricultural Sector (AgrarOLkG), DMK and the supplier are obliged to inform each other in the contract negotiations of the level in the table under Section 10(1) sentence 1 AgrarOLkG to which their annual turnover is to be assigned, or, if the requirements of Section 10(1) sentence 2 clause 1 AgrarOLkG are met, the amount of their respective annual turnover.
9. The supplier is obliged to indicate exactly the purchase order number of DMK and/or the customer on all shipping documents and delivery notes. If it fails to do so, DMK is not responsible for delays in processing and payment.
10. In the absence of any other agreement and subject to any other proof, official values determined by DMK after receipt of the goods are definitive for quantities, weights and dimensions and for delivery amounts. For all shipments, weights shall be indicated in the accompanying documents, insofar as this is customary in the trade or agreed with DMK, or the remuneration is based on weight.
11. The supplier agrees to grant authorities and professional associations responsible for quality and environmental management, prevention of health hazards, approval of DMK's products, production safety and social security issues at the registered office of DMK, at the place of delivery and/or performance and/or at the place of the supplier's registered office access to its production facilities at the request of DMK and to provide DMK with any technically, economically or logistically reasonable support in this context, should the authorities wish to investigate products or substances delivered by the supplier to DMK and/or a service provided by the supplier to DMK or alleged violations of the law by such products, and/or services in which the supplier was involved with a delivery or subcontracted services, or thereby enabled production. DMK also undertakes the reverse in favour of the supplier.



12. In the absence of any other agreement, when commissioning assembly, repair or construction services, the supplier is obliged to inform itself sufficiently of the local conditions relevant to the service to be provided by inspecting the plans available from DMK for the type of execution and scope of the service and by inspecting the construction site and/or assembly site or the location of other services to be provided by the supplier prior to the provision of the service.
13. The supplier shall specify in full all documents to be supplied by DMK in writing or in text form to DMK in good time before performance of the service and request them from DMK.
14. Insofar as the supplier has to provide DMK with material samples, test protocols, quality documents or other documents in accordance with the contract or as a secondary obligation, completion of the delivery and/or service also requires the complete handover of these samples, protocols and documents in German or in English.
15. The supplier undertakes to support DMK in exporting goods, in particular in customs clearance and in clarifying relevant preliminary questions with information about the goods and their contents.

### **Section 3 - Prices and terms of payment**

1. In the absence of an express agreement to the contrary, agreed prices are fixed prices and – unless otherwise agreed in writing – include all costs for packaging, transport to the agreed point of receipt or dispatch (delivery DDP - Incoterms 2020) and customs formalities and duties. Small or minimum quantity surcharges shall not be paid. The supplier is only entitled to increase prices if this has been expressly agreed in the contract. DMK does not recognise price adjustment clauses, unless they are mutually agreed by separate contract between the parties.
2. In the absence of any other express agreement, the place of delivery/place of performance (and the place of any supplementary performance) is the registered office of DMK.
3. The legally regulated value added tax is included in the price, unless it has been expressly designated and agreed as a net price.
4. For the processing of invoices by DMK, it is necessary that they specify the purchase order number and/or the customer in accordance with the details of the purchase order itself and are auditable. If these details are missing, DMK is entitled to refuse payment.
5. The following applies to invoices received by DMK:
  - a. Unless otherwise agreed in writing, invoices received by DMK (outside the scope of the AgrarOLkG) shall be paid
    - within 14 calendar days of the invoice date with a 3% discount,
    - within 30 days of the invoice date net.

Discounts are also permitted if DMK makes use of a right to offset. The receipt of DMK's transfer order by its bank is sufficient for the timeliness of payments owed by DMK.

- b. Within the scope of the AgrarOLkG, DMK shall pay the agreed price to the supplier at the latest within the following deadlines:
  - (1) for perishable agricultural, fishery or food products, within 30 days of delivery,
  - (2) for other agricultural, fishery or food products, within 60 days of delivery.

If a regular delivery has been agreed, the period of this sentence 1 of clause 5. b. shall begin on expiry of the agreed delivery period, but no later than one month after the first delivery. DMK and the supplier



may agree that, notwithstanding the above, the time of receipt of an invoice or equivalent payment statement shall take the place of the time of delivery or expiry of the delivery period.

6. Payments by DMK are not considered as acceptance or waiver of any rights to make claims for defects and do not constitute any acknowledgement of contractual performance.
7. In the case of acceptance of early delivery and/or service, the due date of payment – unless otherwise agreed – shall be based on the originally agreed delivery date.
8. In the event of incomplete or defective delivery and/or service, DMK is entitled to withhold payment in whole or in proportion to the value, reflecting the relation between defect-free and the proportionally defective delivery/service, until proper fulfilment.
9. After fulfilment of the contract, the invoices to be issued by the supplier shall be sent separately after the respective purchase order to the invoice address specified in the order by post or electronically. All accounting documents shall be enclosed in full. Partial service invoices shall be marked with the words “Down payment invoice”, “Partial service invoice” or “Final invoice”. Electronic invoices shall only be considered as proper invoicing if DMK has expressly agreed this with the supplier.
10. If advance payments have been agreed, these are only due when the supplier has provided DMK with a directly enforceable guarantee from a German financial institution or savings bank or a Swiss bank affiliated to the Deposit Guarantee Fund that secures the down payment, which must materially comply with the requirements of the guarantee wording available at [www.dmk.de/guarantees](http://www.dmk.de/guarantees).
11. The supplier is only entitled to rights of retention and set-off against claims of DMK if such claims have been recognised by DMK or legally established.
12. The assignment of existing claims against DMK by the supplier requires the prior consent of DMK, unless they are monetary claims in commercial transactions (Section 354a of the German Commercial Code (HGB)).

#### **Section 4 · Delivery time, delay in delivery and transfer of risk**

1. The agreed delivery and/or service dates and deadlines shall be observed. In the case of an agreed delivery obligation, compliance includes the receipt of goods at DMK or at the agreed place of delivery.
2. The supplier is obliged to inform DMK immediately in writing or in text form, stating the reasons and the expected duration, if circumstances occur or become apparent to it, from which it is apparent that agreed delivery or service dates cannot be met. This also applies if the supplier is not responsible for the delivery delays. In the event of a culpable breach of this obligation, DMK shall be entitled to claim compensation from the supplier for the resulting damage.
3. In the case of earlier delivery or performance than agreed, DMK reserves the right to make a return at the expense of the supplier or to refuse performance of the service or delivery. If there is no return in case of early delivery, the goods shall be stored at the risk and expense of the supplier until the agreed delivery time.
4. Partial deliveries or services of the supplier are only permitted by express agreement with DMK. In the case of agreed partial deliveries, the remaining quantity shall be clearly stated.
5. In the event of a delay in delivery and/or performance on the part of the supplier, DMK shall be entitled to the statutory claims in full. In particular, DMK is entitled to claim damages in place of performance after fruitless expiry of a reasonable grace period.
6. In the event of a delay in delivery and/or performance on the part of the supplier, DMK shall be entitled, after prior written warning to the supplier, to demand a contractual penalty in the amount of 0.5% of the net remuneration for the delayed delivery or service per completed week of delay, but no more than a total of 5% of the net remuneration for the delayed delivery or service; the right to make further statutory claims, in particular claims for damages, remains reserved, but the contractual penalty shall



be offset in full. The supplier reserves the right to prove that no damage or significantly less damage has occurred.

7. In the event of an imminent or already occurring delay in delivery and/or performance, the supplier shall, on request, grant DMK access to all relevant documents in connection with the legal relationship on which the delivery or performance by its suppliers and/or subcontractors is based, and shall identify all relevant subcontractors and suppliers to DMK as the customer entitled to inspect such documents. The supplier is only obliged to disclose business or trade secrets within the meaning of Section 2 no. 1 of the German Trade Secrets Act (GeschGehG), i.e. information that is not generally known or readily accessible to persons in the circles that usually deal with that type of information, either in general or in the precise arrangement and composition of its components, and is therefore of economic value, is the subject of appropriate non-disclosure measures by its rightful owner and in which there is a legitimate interest in non-disclosure, if an offer of a non-disclosure agreement is made by DMK which binds DMK in favour of the supplier with regard to the information to be disclosed. As far as legally required, the supplier is entitled and may be obliged to redact or anonymise certain information in the relevant documents.
8. If, in the event of a delivery or service delay by the supplier, there is a factual reason for this in favour of DMK, the supplier shall grant DMK the right to make direct contact with all possible subcontractors and suppliers involved in order processing for DMK in order to avert or shorten as far as possible any resulting delivery and/or service delay.
9. The entire responsibility for the order remains with the supplier in instances in accordance with the above clauses 7 and 8.
10. Acceptance of the delayed delivery does not constitute a waiver of claims for damages or of a contractual penalty agreed in favour of DMK.
11. In the absence of any other agreement with DMK, delivery shall be made DDP (Incoterms 2020) and is at the risk of the supplier until the time of complete delivery or, in the case of contractual services, acceptance at the contractually agreed service point by DMK.
12. Within the framework of the business relationship, the supplier is obliged to treat each individual purchase order separately in the entire correspondence. It is responsible for ensuring that, as a minimum, all documents such as emails, letters, shipping notices, delivery and packing notes, invoices, waybills, accompanying addresses, etc., include the complete order number, order date, mark of the customer and transaction number of DMK.
13. The aforementioned documents such as invoices, delivery notes and packing slips must be attached to each shipment as a single copy. The content of these documents for deliveries of goods shall include as a minimum: quantities and unit of quantity, gross, net and, if applicable, calculation weight, purchase order number, article description, remaining quantity for partial deliveries, our order number and batch number.
14. DMK is entitled to require the supplier to provide certificates of origin and quality with regard to the delivery items in German or English. Any documents required by the supplier for export to countries indicated to the supplier before conclusion of the contract shall be made available to DMK free of charge. The remuneration for this is already included in the remuneration for the main service.
15. In the case of contracts for work and services and such purchase contracts for which acceptance of the delivery item has been agreed, the transfer of risk occurs only on formal acceptance of the service and/or delivery by DMK. Otherwise, the transfer of risk occurs on delivery of the delivery item to DMK or to the agreed place of delivery and performance. Acceptance fictions are excluded in these cases.

## **Section 5 · Non-disclosure**

1. All business, technical or product-related information, calculation data, manufacturing instructions, recipes, production internals and data of any kind, including other development or manufacturing



features recorded in writing in the form of samples, properties or data, made available to the supplier by DMK, such information which is evident from any objects, documents or data handed over and other knowledge or experience communicated to the supplier by us or our customers (“Information”) – in whatever form of media – shall not be disclosed to third parties, as long as and insofar as such Information is not demonstrably public knowledge or there is a legal or official disclosure obligation. The Information may only be made available in the supplier’s own business to persons who must necessarily be involved in its use for the purpose of a delivery or service for DMK and who are also obliged to maintain confidentiality in writing. The Information shall remain the exclusive property of DMK.

2. Without the prior express consent of DMK, such Information may not be reproduced or used commercially - except for deliveries to DMK. The above non-disclosure agreement shall also apply after termination of the delivery or service relationship until its lawful disclosure. The above non-disclosure obligation does not exist if the supplier can prove that it has itself developed the transmitted Information in a lawful manner before its disclosure or was already aware of it (in which case the supplier shall notify DMK in writing or in text form immediately after provision of the Information – at the latest within 14 calendar days, otherwise it may not have recourse to this exception), or it has become publicly known by written declaration on the part of DMK, or there is an official or statutory disclosure obligation.
3. At DMK’s request, all Information and data (including, if applicable, copies or records made) and objects provided on loan shall be returned to DMK immediately and completely or destroyed, with confirmation of the destruction in writing or text form. If the Information provided to the supplier takes the form of data, this shall be completely deleted by overwriting on first request by DMK at any time, with prompt confirmation of deletion in writing.
4. In the case of data provided by DMK to the supplier, DMK is also entitled to issue a penalty-based cease-and-desist declaration against the supplier, which includes a contractual penalty for each culpable instance of violation of the cease-and-desist obligation for use of the data provided by DMK or copies thereof, and a requirement for the supplier to return and/or delete the data. DMK may set this penalty at its reasonable discretion (Section 315 BGB) relative to the remuneration of the supplier and the propensity of the breach of obligation to cause damage. This may be reviewed and reduced in court at the request of the supplier (Section 315 III BGB). The supplier is not obliged to cease and desist if it is subject to an official or legal obligation to disclose or use data.
5. DMK reserves all rights to such Information and data (including copyright and the right to register industrial property rights such as patents, utility models, trademark protection, etc.). Insofar as these have been made available to DMK by third parties, this reservation of rights also applies in favour of those third parties.
6. No licenses or warranties are associated with samples, models, information and/or data provided to the supplier.
7. Products that are manufactured by the supplier or its vicarious agents according to documents and/or recipes and/or data (e.g. drawings, samples or models and the like) designed by DMK and/or its vicarious agents or according to information marked or designated as confidential by them or with features and /or properties of a product or its tools or reproduced tools that are not known to the public may not be used by the supplier itself outside the order, nor offered or supplied to third parties. The supplier undertakes to agree this as an obligation on its vicarious agents and in favour of DMK as a real contract in favour of third parties, and to prove this to DMK on first request.

## **Section 6 · Subcontracting**

1. The supplier is entitled to award subcontracts if and to the extent that no strictly personal service has been agreed by it. If, however, the supplier is authorised to award subcontracts in this case, DMK is entitled to object to the award of subcontracts by the supplier for good cause. In this case, the supplier shall execute the order itself or through another subcontractor. Good cause exists in particular if, on objective consideration, the subcontractor does not provide a guarantee of proper fulfilment of the



contract concluded by DMK with the supplier or completion of the work undertaken by the subcontractor in this respect.

2. The supplier shall inform DMK of the subcontractor's deployment in writing or in text form in good time, stating all relevant information (e.g. company name, address, qualifications, references, supplier self-disclosure), so that DMK can check before the planned deployment for performance of services whether there is good cause to object in the aforementioned sense and still inform the supplier of the result of its check.
3. Insofar as the supplier uses third parties to fulfil its performance obligations, the supplier shall bind those third parties in the same way as the supplier itself is bound by the order and these Terms and Conditions. The supplier always concludes contracts with third parties in its own name and on its own account.

### **Section 7 · Tools**

1. Tools shall be manufactured by the supplier according to drawings and specifications of DMK. Modifications or deviations are binding only if DMK has expressly accepted the created tool. The supplier is obliged to point out expressly any modifications or deviations in the above sense in writing both on the drawings and in a separate declaration outside the drawings and technical data sheets.
2. DMK is entitled to rights of use and industrial property rights to the tools.
3. The supplier is obliged to use the tools of DMK exclusively for the preparation of the deliveries that are the subject of the purchase orders. If the supplier culpably violates the above obligation, after a fruitless request for remedy it shall be liable vis-à-vis DMK for a contractual penalty for each case of culpable infringement, which DMK shall determine at its reasonable discretion (Section 315 I BGB), taking into account the amount of the supplier's remuneration and the propensity of the breach of obligation to cause damage, the amount of which shall not exceed EUR 100,000.00 in individual cases. DMK reserves the right to assert other or further claims, in particular for omission and compensation. The contractual penalty shall be fully offset against any claims for compensation. For all conceivable cases of occurrence, the contractual penalty is limited to a maximum amount of EUR 300,000.00.
4. For the duration of the supply and service relationship with DMK, the supplier shall guarantee the functional condition of the tools provided to it by DMK. Any maintenance and/or servicing costs shall be borne by the supplier. Tool costs shall be covered by DMK if they relate to
  - changes to existing tools or
  - new materials.
5. The supplier is obliged to insure the tools of DMK and the raw materials provided in the context of execution of the contract at replacement value against destruction or loss (in particular due to fire, water damage, theft, burglary or natural damage) to an appropriate extent. The supplier hereby assigns to DMK any claims for compensation against the insurance company in advance; DMK hereby accepts this assignment.
6. For the duration of the delivery and service relationship, the supplier shall bear the risk of accidental loss or accidental deterioration of the tool provided to it by DMK.

### **Section 8 · Food/ Marketability/ Packaging material**

1. The conditions in accordance with this Section 8 apply specifically to foods that are the subject of a purchase order, including food additives and packaging material. Unless otherwise stipulated in Section 8, the other provisions of the Terms and Conditions shall apply.
2. The supplier shall guarantee that the delivered goods and materials are true to the sample and comply with the contractual agreements, in particular the quality and quantity specifications stated in the purchase order and any related DMK specifications.



3. The supplier is obliged to complete the specification data sheets and/or supplier specifications of DMK or to provide the minimum information defined by DMK, and complete the certificates of conformity in full, and to sign and return them to DMK before initial delivery.
4. The supplier guarantees the marketability of the goods both in the production country and on the respective sales markets indicated to it by DMK before or on conclusion of contract. Insofar as the goods delivered by the supplier are mixed, combined and/or processed by DMK with other goods, the supplier shall guarantee the usability and marketability in relation to both the manufacturing process and the end product, provided that DMK notifies it of the intended use in writing before conclusion of contract. The supplier is obliged to inform DMK, without being asked, of any concerns regarding corresponding use of the delivered goods during production.
5. Any change in quantities and/or change that would constitute a deviation from the specification agreed by DMK with the supplier and that could have an effect on the quality and/or marketability of the contractual goods shall be reported to DMK in writing or in text form at least twelve (12) weeks before the planned implementation. Corresponding changes always require the express consent of DMK, unless required by mandatory legal regulations. Even in the event of a recipe and/or packaging change, the supplier shall remain responsible for the marketability of the goods in accordance with the specifications of the above paragraphs. The assertion of further claims on the part of DMK remains unaffected.
6. The supplier guarantees proper and complete inspections of the goods in the course of production. It is obliged to ensure that they comply with the applicable legal situation and the latest technology, taking into account the product-specific special requirements of the food and animal feed industry. In addition to compliance with the relevant food and animal feed regulations, the supplier shall ensure, without prejudice to other obligations, that production and warehouse-specific requirements are complied with in accordance with the intended use of the goods disclosed or recognisable to it.
7. If ingredients or additives come from third-party suppliers, the supplier shall guarantee before the start of production that it only uses ingredients or additives that unconditionally ensure the marketability and health safety of the raw materials and this fact is confirmed by corresponding certificates from accredited laboratories. The same also applies to the supplier's deliveries of goods. Third-party suppliers shall be identified to DMK on request. On request, the certificates for these third-party suppliers shall be submitted to DMK. The supplier shall guarantee that it monitors its suppliers and continuously carries out incoming goods inspection at least in accordance with industry-standard requirements.
8. DMK is entitled to exclude the commissioning of third-party suppliers if there are doubts about the compliance of those third-party suppliers with food or animal feed quality standards.
9. The supplier shall guarantee continuous and complete traceability of the goods delivered by it in accordance with the applicable legal provisions (in particular REGULATION (EC) No 178/2002, the German Food and Animal Feed Code (LFGB) and any future regulations). Beyond the goods themselves, the ingredients used, raw materials, additives and auxiliary substances, etc., the time of manufacture/production, the packaging materials and the course of the manufacturing process shall be traceable. The supplier is obliged to provide DMK with the necessary information immediately on request regarding certain goods about which enquiries are being made (official complaint, customer complaint, etc.). The assertion of further claims against the supplier remains unaffected by this.
10. The supplier shall guarantee that the goods delivered by it are not genetically modified foods and/or do not contain any food, additives or flavourings produced from genetically modified organisms according to the relevant provisions (in particular Regulation (EC) No. 1829/2003, (EC) No. 1830/2003 and any future relevant regulations). The supplier shall guarantee to this extent that the goods are not subject to labelling requirements with regard to existing and future genetic engineering labelling requirements. The supplier shall guarantee that the goods delivered by it are suitable for processing into organic infant formula and in particular comply with the "Regulation on Dietary Foods" (Dietary Regulation), Regulation No. 2006/1881/EC ("Contaminants Regulation") and Regulation





2007/834/EC ("Organic Regulation"), and the corresponding labelling regulations for agricultural products and foodstuffs in the latest version.

11. In the case of goods the labelling of which has or must have shelf-life-related dates (minimum shelf-life date, use-by date, etc.), the remaining term, i.e. the time available to DMK for processing and/or marketing of the goods, calculated from the day following the receipt of the goods, must be at least 80% of the total term (time span between production and the specified date). Deliveries of goods that do not meet this requirement are considered defective.
12. The supplier is obliged to provide DMK with the necessary or appropriate written documents and declarations, such as certificates of origin, health certificates, safety certificates, etc., immediately and free of charge for any export of the goods to European and/or non-European countries indicated before conclusion of contract. The supplier shall guarantee the authenticity and correctness of the content of such certificates.
13. If the subject of the supplier's delivery is packaging material that DMK uses, the supplier shall guarantee unrestricted suitability of the packaging material for transport and use. In particular, it shall ensure that the packaging material does not have any adverse effects on the packaged product.
14. The supplier shall pack the items/substances to be delivered exclusively in environmentally friendly packaging material or environmentally friendly containers in such a way that transport and storage damage is prevented during normal handling. The packaging of the delivery items is included in the price, unless DMK has expressly agreed otherwise with the supplier. Unless otherwise agreed, the supplier is obliged to take back the transport packaging on delivery. If it is not taken back, DMK is entitled to charge the supplier the costs incurred for proper disposal of the transport packaging. Waste generated by the supplier during delivery or assembly shall be disposed of free of charge.
15. Unless otherwise agreed, the supplier shall deliver the goods on pallets that correspond at least to quality class "B" according to GS1. The same applies to H1 pallets and CHEP pallets. DMK undertakes to exchange Euro pallets delivered in the required quality on delivery. No replacement shall be provided for damaged Euro pallets. The supplier shall also choose the packaging in such a way that forklift transport is made possible, the goods can be stored directly in high-bay warehouses, stacking can take place and the goods can be forwarded to production without changing the packaging.
16. The supplier is obliged to comply with all relevant packaging regulations of European and German law, in particular the Packaging Act and, insofar as packaging is subject to system participation, ensure that it is properly included in a dual system. The supplier shall indemnify DMK against any claims of third parties, including public authorities, due to culpable violation of the above obligation.
17. For goods that are exclusively intended for one or more foreign markets according to the purchase order, packaging shall bear the green dot - unless expressly agreed otherwise - insofar as the respective country of destination has adopted the green dot as a financing symbol for the collection, sorting and recycling of the packaging. Otherwise, if there are other private-sector systems there, their marks shall appear on the packaging and the supplier is obliged to participate in the system in question.
18. If, due to actual or alleged health hazards, there is a public warning, in particular in the media, against purchasing and using products of a comparable nature or with ingredients comparable in composition to the goods ordered from the supplier by DMK, DMK is entitled to cancel orders not yet delivered by the supplier to DMK and to return goods already delivered against reimbursement of the purchase price, insofar as there is a suspicion of defects in the ordered/delivered goods. The right of cancellation shall be exercised by DMK in writing vis-à-vis the supplier within one month of first publication of the warning. Further claims to which DMK is entitled remain unaffected by this.
19. The supplier guarantees that transport is carried out in clean containers suitable for food transport, while avoiding contamination or other negative influences on the goods due. Delivery of liquid



foodstuffs (e.g. glucose syrups, oils or comparable substances) shall take place in insulated silo vehicles (only for food transport). The tank openings shall be sealed before transport.

### **Section 9 · Change management**

1. DMK is entitled to demand changes to the delivery and/or service object in accordance with the regulations standardised in this Section 9 even after conclusion of contract, if the deviations are technically and logistically reasonable for the supplier, taking into account the object of its business and its production or service knowledge and the supplier's order situation from an objective point of view. The supplier shall immediately check the change request and immediately inform DMK in writing of its effect on the contractual structure. This notification obligation includes an explanation as to whether the desired changes are technically and/or logistically possible and relevant at all, and an explanation of the effects of the change requests on the previously agreed contractual structure, e.g. the concept, periods, deadlines, acceptance procedures and remuneration in the form of an offer.
2. On agreement of the changes to the terms of the contract, the change to the purchase order shall become an integral part of the contract.
3. In the case of changes that are technically and economically insignificant for the supplier, the supplier cannot demand a change to the terms of the contract.
4. The aforementioned regulations under para. 1, 2 and 3 shall not apply if the scope of Section 15 AgrarOLkG is affected.

### **Section 10 · Acceptance**

1. All services of the supplier for which acceptance is possible are subject to formal acceptance. If verification of the supplier's services requires the commissioning of a system or machine, acceptance shall take place only after the agreed functional tests have been successfully completed. Otherwise, the test period for DMK is 14 calendar days from receipt of the notification of completion, unless otherwise expressly agreed. In this respect, the supplier shall waive the objection of late notification of defects.
2. If the supplier is to provide a service that requires acceptance by DMK, the supplier is obliged to notify DMK in writing or in text form of its request for acceptance at least 14 calendar days before the agreed acceptance date.
3. If defects are found during the acceptance test, a partial acceptance of defect-free services is possible after coordination with DMK, without the supplier having a legal claim to this. However, this partial acceptance is not considered final acceptance within the meaning of Section 640 BGB.
4. Acceptance requires an acceptance protocol in written or text form, which is signed by the parties. Acceptance fictions are expressly excluded, unless DMK uses the work result commercially as intended outside of testing purposes for more than 30 calendar days without interruption.

### **Section 11 · Warranty**

1. The supplier shall warrant and guarantee within the scope of application of the UN Sales Convention (CISG) with regard to all deliveries/services that they (i) fully comply with the agreed specifications and/or recipes, the legally prescribed maximum levels for pesticide residues and other contaminants are not exceeded, for technical objects that they correspond to the current state of the art at the time of conclusion of contract, furthermore that they comply with the relevant legal provisions, in particular food legislation, and the regulations and directives of authorities, professional associations and trade associations of the Federal Republic of Germany and the European Union, in particular, if relevant, with the Machinery Directive of the European Union, and the laws of the country of use of the deliveries/services indicated before conclusion of contract and (ii) are suitable for the intended use identified by DMK and (iii) have properties that are usually inherent in delivery items or services of the ordered type. The supplier shall also warrant and guarantee within the scope of application of the UN



Sales Convention (CISG) the environmental compatibility of the delivered products and packaging materials.

2. The supplier undertakes to comply with all legal regulations, provisions and limit values relevant to the delivery item and/or the contractual services. If compliance with technical regulations and standards such as CE, CSA or UL specifications has been agreed for the products or their components, the supplier shall provide DMK with proof of this on invoicing as a prerequisite for the payment claim.
3. Insofar as the contractual performance of the supplier is concerned with the delivery of commodities within the meaning of Section 2(6) LFGB (*Food, Commodities and Animal Feed Code*), the supplier shall guarantee that the commodities produced and/or supplied by it comply with the relevant provisions of German and European food law, in particular the provisions of Sections 30 ff LFGB, and can be used by DMK without restriction for the production of food. In addition, the supplier shall guarantee that the goods supplied by it comply with the current state of the art and the recommendations of the BfR (*Federal Institute for Risk Assessment and Communication*) at the time of conclusion of contract. The supplier shall also guarantee that the commodities supplied by it have been manufactured and/or treated under perfect technical conditions for food, with the necessary care and with application of the hygiene and quality controls required for the production of food.
4. In any case, DMK is entitled to demand from the supplier, at the former's discretion, rectification of defects or delivery of a new item.
5. If the delivered products do not comply with the warranty provided by the supplier or the guarantee within the scope of the CISG, the supplier is liable for all resulting damages including consequential damages to the statutory extent.
6. In the event of a warranty claim (*Breach of duty due to poor performance*), the supplier is obliged to bear all expenses necessary for the purpose of remedying the defect or making a replacement delivery. These also include sorting, removal and replacement costs in relation to the delivery item. The supplier shall also bear any costs incurred or increased by the fact that the delivery item has been moved to a place other than the original place of delivery.
7. DMK is entitled to check any quality or quantity deviations in the goods by means of drawing meaningful random samples, e.g. according to AQL random sample control (DIN 2859), provided that this is compatible with the circumstances of the proper course of business and the nature and scope of the delivery.
8. If the supplier is in default on removal of a defect, DMK is entitled, after prior written warning, to demand a flat-rate contractual penalty for default on removal of defects for the defective delivery without further proof of damage in the amount of 0.5% of the net remuneration agreed for the defective delivery and/or service for each completed period of 7 calendar days of default, but up to a maximum of 5% of the agreed net remuneration. However, the supplier has the option of proving to DMK that DMK has suffered no damage or significantly lower (= at least 10% lower) damage. Further legal and contractual claims and claims and rights arising for us within the scope of the UN Sales Convention (CISG) remain unaffected by this. The aforementioned contractual penalty shall be fully offset against any compensation claims.
9. In the event of defects of title due to a culpable breach of obligation by the supplier or its vicarious agents, the supplier shall indemnify DMK and its customers against third-party claims in this regard, including the costs of legal defence and associated administrative costs. Insofar as the supplier has manufactured the delivery or service according to documents handed over by DMK, such as models or drawings, or on DMK's express instruction, and could not have known that third-party property rights were being violated as a result, the above indemnification obligation shall not apply.
10. If DMK takes back products finished and/or sold by it because of defects in the delivery item delivered by the supplier or if claims are made against DMK for this in any other way, DMK is entitled to



unrestricted recourse against the supplier, in which case it is no longer necessary to set a grace period before exercising its rights in respect of defects, as is usually the case.

#### **Section 12 · Statute of limitations**

1. Claims on the part of DMK against the supplier due to material defects shall expire 30 months after the transfer of risk in the case of purchase contracts and 30 months after acceptance in the case of contracts for work and services, unless a longer warranty limitation period applies by law. In the latter case, that longer period shall apply.
2. The limitation period for defects of title is 4 years, calculated from acceptance, in the absence of planned acceptance from delivery of the service result due under the contract.
3. The limitation period for liability arising from the infringement of property rights shall commence as soon as the claim has arisen and DMK becomes aware of the circumstances giving rise to the claim or should have become aware of them without gross negligence. The limitation period for such claims is 4 years.
4. Insofar as DMK is also entitled to non-contractual compensation claims due to a defect, the regular statutory limitation period applies (Sections 195, 199 BGB).
5. If, with the consent of DMK, the supplier submits to an inspection for the existence of a defect or the elimination of a defect, the limitation period shall be suspended until the supplier has notified DMK of the result of the inspection in writing or in text form or declares that the defect has been rectified to DMK in the aforementioned form, or refuses to continue rectification or the rectification itself in written or text form to DMK.

#### **Section 13 · Force majeure**

Force majeure and other events not foreseeable at the time of conclusion of contract and not reasonably avoidable (e.g. operational disruptions, industrial disputes, riots, pandemics and epidemics for which DMK is not responsible) entitle DMK - without prejudice to its other rights - to withdraw from the contract in whole or in part, insofar as they are not of insignificant duration (i.e. do not last less than 4 weeks) and result in a significant reduction in the needs of DMK, and DMK immediately notifies the supplier of the obstacle, unless it has assumed warranty liability.

#### **Section 14 · Product liability**

1. Insofar as the supplier is culpably responsible for product damage, it is obliged - unless expressly agreed otherwise - to indemnify DMK and its customers against all claims for damages and reimbursement of expenses by third parties insofar as the cause is within its sphere of control and organisation. In addition to damages to third parties, the supplier's obligation to pay compensation also includes usual and necessary costs of legal defence, recall costs, testing costs, installation and removal costs.
2. Within the scope of its liability for damages within the meaning of Section 1, the supplier is also obliged to reimburse any expenses arising from or in connection with any recall campaign carried out by DMK. DMK shall inform the supplier in advance about the content and scope of the recall measures to be carried out – as far as possible and at a reasonable time – and give it the opportunity to comment. Other legal or contractual claims remain unaffected.
3. The supplier undertakes to take out business liability insurance with minimum cover of EUR 10,000,000 per instance of personal injury/property damage and EUR 10,000,000.00 for financial losses and recall cost liability insurance with minimum cover of EUR 10,000,000 per instance of personal injury/property damage and EUR 10,000,000.00 for financial losses, each exclusively for the contractual relationship with DMK; if DMK is entitled to further claims for damages, these remain unaffected. The supplier shall provide evidence of the aforementioned insurance and the premium payment for this to DMK on first request. If evidence of insurance cover and premium payment is not



provided to DMK at its request within 14 calendar days, DMK is entitled to withdraw from contracts that have not yet been fulfilled in whole or in part (with regard to the part that has not yet been fulfilled).

4. The supplier is otherwise liable in accordance with the statutory conditions. Exclusions or limitations of liability of the supplier do not apply.

### **Section 15 · Granting of rights**

1. The supplier acknowledges that all rights, recipes, drawings, individual EDP programs, photos, film material and packaging, layouts for print media or other such documents and/or data relating to all deliveries or services (including research and development work) and patent and utility model rights, design rights, copyright, trademark rights, database rights, rights to expertise and any other industrial property rights (hereinafter "Property Rights") that apply to the deliveries or services, arise from their use and/or are embodied in them, including all conceivable legal issues relating to ideas, drafts and designs, shall be transferred to DMK in full and without restriction at the time of their creation. The supplier hereby transfers all rights to the deliveries or services and all Property Rights to DMK. DMK hereby accepts this transfer.
2. In the event that the transfer of rights under para. 1 cannot be completed effectively under mandatory applicable law, in particular with regard to copyright, the supplier hereby grants DMK a comprehensive, exclusive, spatially and temporally unlimited right of use to the deliveries and services or Property Rights, which applies without restriction to all types of use. Insofar as is possible under applicable law, the supplier hereby waives unconditionally and irrevocably all moral rights that exist to deliveries or services already created or created in future, including the right of attribution and the prohibition of distortion.
3. The transfer or granting of rights includes in particular the right to use the work results created for DMK's own or third-party purposes in any way worldwide and for an indefinite period of time, including use in and on products, whether DMK's own or those of third parties, in all types of use. It also includes the right to reproduce and/or publish the results of the work. The rights also include the right to processing, i.e. the right to further process the results of the work or to have them further processed by third parties.
4. At DMK's request, the supplier undertakes to provide all documents immediately and to provide any support that, at DMK's discretion, is necessary to obtain the rights to the deliveries or services and the other Property Rights that exist or arise from the deliveries or services, and/or to register such Property Rights. To the extent that DMK registers the invention for a protection right, it shall assume the costs incurred for registration and maintenance of the protection right. If DMK decides against registration for the inventions/work results or if DMK is no longer interested in an existing property right, the supplier may pursue the application or maintenance of the property right at its own expense. In this case, however, DMK shall retain a free, non-exclusive and transferable right of use to this.
5. The aforementioned transfers of rights and granting of rights of use are fully compensated with the agreed remuneration of the supplier.
6. The supplier assures that granting and transferring rights in this way does not contradict any existing obligation on its part. It is responsible for ensuring that its freelance and permanent employees and other third parties commissioned by it – whether in its own or in someone else's name – have transferred the rights of use required for realisation of the respective projects to it or DMK in accordance with the above regulations or have granted or shall grant them to it or directly to DMK, to the extent that these rights are to be transferred or granted by the supplier to DMK. This includes, for example, waiver of the right to name the author and other moral and unlimited use of the inventions created by its employees which are eligible for patent or utility model protection. On request, the supplier is obliged to disclose the relevant agreements.
7. The supplier warrants that the use of the services provided by it and/or on its behalf does not violate or depend on the rights of third parties. The supplier shall indemnify DMK on first request against any claims of third parties asserted against DMK resulting from the contractual exploitation of the services



provided by the supplier and shall compensate DMK for any damage incurred by DMK as a result of the third party's claim, including any court and lawyer's fees incurred for legal defence. In all other respects, the statutory provisions apply.

8. The supplier shall provide the samples required for the goods to be manufactured, insofar as this is within the scope of its technical and logistical capabilities, e.g. for design of the packaging and declarations.

#### **Section 16 · Spare parts and availability**

1. The supplier shall guarantee that the delivery of spare parts is ensured by it for a period corresponding to the usual technical service life of the delivery item, but at least 10 years from the last delivery of the item in question to DMK, unless other availability of spare parts has been expressly agreed with DMK. During this period, the supplier undertakes to deliver these parts to DMK under customary economic and legal conditions and to disclose the original manufacturer's designations for the parts.
2. If the supplier intends to discontinue delivery of spare parts for the contractual delivery item after expiry of the aforementioned period, DMK shall be given the opportunity to place a final order with a lead time of at least 90 calendar days, which must correspond at least to the last average annual demand of the last three years. The same applies to cessation of supply before the deadline, whereby DMK shall not lose any claims to compensation by reordering.

#### **Section 17 · Retention of title**

1. Raw materials, tools, materials, parts, containers and packaging provided by DMK may only be used by the supplier as intended for the execution of the order placed by DMK. In the event of provision to subcontractors, the supplier undertakes to ensure that the same applies to those subcontractors as under a contract in favour of DMK and to provide evidence to DMK without being requested to do so.
2. DMK reserves the exclusive right of ownership and copyright to illustrations, formulas, recipes/manufacturing or usage instructions, drawings, calculations and other documents and data belonging to it; they may not be made accessible to third parties by the supplier or used or reproduced by the supplier or by third parties without the express consent of DMK. In addition, they are to be used exclusively for processing of the respective purchase order or for operating the contractual relationship entered into with DMK and, after processing the order and when continuing obligations come to an end, they shall be returned to DMK without request, including all copies, or be destroyed. If these illustrations, formulas, drawings, calculations and other documents take the form of data, they shall be completely deleted by overwriting at the request of DMK at any time and the deletion by the supplier shall be confirmed to DMK immediately in writing or in text form.
3. Tools provided by DMK shall remain its property. If the tools are manufactured by the supplier in accordance with the specifications of DMK itself or by third parties, DMK shall be granted ownership of the tools at the latest on their completion and delivery/transfer to the supplier, subject to a simple retention of title, if agreed. The supplier shall maintain DMK's sole ownership of the tools for DMK. The remuneration for this is already included in the remuneration provided for the order.
4. If DMK provides parts to the supplier, it shall retain title to them (reserved goods). Processing or transformation of them by the supplier shall be carried out for DMK. If the reserved goods of DMK are processed with other items that do not belong to it, DMK shall acquire co-ownership of the new item in the ratio of the gross value of its item (purchase price plus VAT) to the other processed items at the time of processing.
5. If the item provided by DMK is inseparably mixed with other items that do not belong to it, DMK shall acquire co-ownership of the new item in the ratio of the gross value of the reserved item (purchase price plus VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the supplier's item is to be regarded as the main item, it is agreed that the supplier shall transfer proportionate co-ownership to DMK in the aforementioned ratio; the supplier shall maintain the sole ownership or co-ownership for DMK.



6. The supplier is obliged to insure the raw materials and tools belonging to DMK and made available to it at replacement value against fire, water and theft damage at its own expense. At the same time, the supplier hereby assigns to DMK all claims for compensation arising from this insurance; DMK hereby accepts the assignment.
7. The supplier is also obliged to carry out any necessary maintenance and inspection work on the tools of DMK and any servicing or repair work at its own expense in a timely manner and to prove that it has done so to DMK. It shall immediately notify DMK in writing of any malfunctions in the machines and/or tools provided; if it culpably fails to do so, DMK is entitled to claim compensation in the event of damage.
8. Insofar as the security rights to which DMK is entitled in accordance with clauses 1 to 5 exceed the purchase price of all of the reserved goods which have not yet been paid for by more than 10%, DMK is obliged on request by the supplier to release the security rights, selected at its discretion.
9. The provisions of Section 7 (Tools) remain unaffected.

#### **Section 18 · Other requirements for deliveries and services**

1. The supplier undertakes to use only materials for its deliveries that comply with the applicable statutory food and safety regulations, in particular for toxic and dangerous substances and – if relevant – the REACH Regulation (Regulation (EC) 1907/2006) of the EU. The same applies to environmental protection regulations and regulations related to electricity and electromagnetic fields. The supplier shall comply with the technical data or limit values corresponding to the current state of the art at the time of conclusion of contract or further technical data or limit values agreed for its delivery/service. The above obligation includes all regulations that apply to the Federal Republic of Germany and the European Union and the country of use indicated to the supplier before conclusion of contract with regard to the contractual delivery and/or service and - if deviating from these - also the regulations of the buyer countries indicated to the supplier before or with the purchase order. The supplier shall demonstrate compliance with these regulations to DMK on first request and shall cooperate with the competent authorities in providing appropriate evidence.
2. If the supplier's products do not comply with the requirements set out in clause 1, DMK is entitled to withdraw from the contract in accordance with the statutory provisions. Further claims for damages on the part of DMK remain unaffected.
3. The supplier undertakes to comply in full with the requirements of the German Minimum Wage Act (MiLoG) for all of its employees and ensure compliance with the regulations of the MiLoG with any subcontractors used. The supplier guarantees compliance with the provisions of the German Posted Workers Act (AEntG).
4. If the supplier culpably violates an obligation under the above clause 3, it is obliged to indemnify DMK against all claims by third parties in this regard. In this case, DMK is further entitled to withdraw from all contracts with the supplier in respect of any part that has not yet been fulfilled in accordance with the statutory provisions. Claims of the supplier on the basis of such withdrawal are excluded.
5. On first request, the supplier undertakes to provide DMK with proof of compliance with the provisions of the MiLoG regarding its employees or the employees of subcontractors without delay by providing appropriate proof of payment of wages. If the supplier is in default for more than 30 calendar days, the above clause 4 sentence 2 shall apply accordingly.
6. The supplier undertakes to carry out any activities vis-à-vis DMK that constitute temporary employment within the meaning of the German Temporary Employment Act (AÜG) only if it has all the permits required for this in accordance with the relevant regulations, in particular the AÜG. Furthermore, the supplier undertakes vis-à-vis DMK to comply in full with the relevant regulations, in particular the AÜG, in the event of temporary employment.



7. If the supplier culpably violates an obligation under the above clause 6, it is obliged to indemnify DMK against any claims by third parties in this regard. In this case, DMK is further entitled to withdraw from all contracts with the supplier in respect of any part that has not yet been fulfilled in accordance with the statutory provisions.
8. On first request, the supplier undertakes vis-à-vis DMK to provide proof of compliance with the obligation under clause 7 above. If the supplier is in default for more than 30 calendar days, the above clause 4 sentence 2 shall apply accordingly.

#### **Section 19 · Quality and documentation**

1. The costs of declarations of conformity, certificates of origin, other evidence of certification (e.g. ISO 9001, ISO 13485, CE, CSA or UL specifications where relevant) and any necessary certificates of analysis shall be borne by the supplier in the absence of other express agreements. The declarations of conformity for packaging materials supplied shall be submitted to DMK immediately with each delivery in German and English.
2. Regardless of this, the supplier shall maintain the quality of the delivery item and constantly check it until delivery. It shall notify DMK immediately of any possible improvements. The supplier shall inform DMK immediately in writing or in text form of recognisable errors in specifications and foreseeable complications. This shall be ensured and documented by suitable testing and measuring methods. At the request of and in coordination with DMK, the supplier undertakes to have quality-related parameters and guideline values relevant for the fulfilment of customer requirements regularly checked by an accredited laboratory. The supplier shall submit the complete test results to DMK in writing without delay and at no additional cost.
3. The scope of delivery shall include the product-specific and/or technical documentation, the certificates of conformity/certificates of analysis (at DMK's discretion in German and/or English) and other documents, certificates and operating instructions required for the ordered item or its use, product labels, warnings and other user information, at DMK's discretion in German and/or English, and the legally required marking of the parts and the product and/or its packaging.
4. The supplier undertakes to mark all allergens that may be present in accordance with Annex II of Regulation (EU) No. 1169/2011 on the papers accompanying the product and clearly and visibly on each pallet or container in German and/or English.
5. The supplier shall ensure that exact traceability of the delivery items is guaranteed via batches or serial numbers.

#### **Section 20 · Software, data security**

1. If the delivery item contains software created for DMK, DMK shall receive the source code and the right to use the software, to reproduce it as required, to change it and to transfer it together with the delivery item to third parties worldwide free of charge or in return for payment, without any special further remuneration, including to companies affiliated with DMK in accordance with Section 15 of the German Stock Corporation Act (AktG) or otherwise under company law.
2. For the purpose of maintenance and further development, DMK is entitled to retranslate the software. If the supplier develops customised software for DMK, DMK is entitled to the source code for unrestricted use at its discretion.
3. Remuneration for software shall only become due on completion of a formal acceptance procedure with a written declaration of acceptance by DMK.
4. In the case of the delivery of software, supplementary performance in the form of new program versions is only permitted with the prior express consent of DMK. If DMK has given its consent, the





supplier is obliged to instruct DMK's employees in the new version of the program at its own expense in return for an agreed remuneration.

5. If the supplier is granted access to networks and/or data processing systems of DMK or its customers through DMK, this access may only be used for the purpose of fulfilling the respective individual purchase order. The supplier undertakes in particular in these cases to observe the provisions regarding confidentiality in accordance with Section 5 and to impose these on its employees and other third parties involved in the execution. Unless absolutely necessary for the fulfilment of the order by the supplier, the supplier is not entitled to copy, change, reproduce or pass on to third parties any data accessible to it from DMK without the prior written consent of DMK. DMK is liable only to the extent required by law for the functionality of access security and for malfunctions in the aforementioned networks and data processing systems and for any damage resulting from their use.
6. The supplier shall take into account the relevant technical directives and recommendations of the German Federal Office for Information Security in order to protect DMK from material damage, financial loss, liability, costs, expenses or indirect damage resulting from a data security breach. In particular, the supplier shall protect the systems to which it has access against unauthorised access, storage, modification and other unauthorised interventions or attacks of any kind by employees or other third parties.
7. DMK is entitled to check compliance with the data security requirements at any time with prior written notice of at least five working days. If DMK has concrete grounds for suspicion of a violation of data security requirements, such a check does not require any notice. As part of the check, the supplier shall grant DMK access to its business facilities relevant for the check, in particular its IT facilities, during its normal business hours.

## Section 21 · Auditing

1. DMK and its customers – under a genuine contract for the benefit of third parties within the meaning of Section 328 BGB, (**authorized auditors**) – are entitled but not obliged to carry out an audit of the supplier themselves or to have such an audit carried out by an expert and/or consultant appointed by DMK, who is acceptable to the supplier and obliged to maintain confidentiality, including in relation to DMK's own certification. This includes a review of the supplier's operations and quality assurance system and a subsequent evaluation. Within the scope of its legal options, the supplier shall ensure that its sub-suppliers grant DMK the same auditing right. The knowledge gained in this way shall be used as the basis for further award of contracts and for internal classification of the company (*rating*) by DMK.
2. DMK and the authorised auditors specified under clause 1 are entitled to check the current business operations of the supplier and to monitor the quality assurance measures during its usual business hours and with prior notification in good time.
3. If DMK proves a legitimate legal interest, it has a right to inspect the relevant documents of the supplier within the framework of applicable legislation. Such a legitimate interest exists in particular if it would be possible to gain knowledge in this way to assess the necessity and handling of a recall.
4. Within the scope of the exercise of its rights by DMK in accordance with the above paragraphs 1 to 3, the supplier is not obliged to disclose business and/or trade secrets within the meaning of Section 2(1) GeschGehG (see Section 4 para. 7.), unless the authorised auditor exercising its right of audit has offered to conclude a non-disclosure agreement regarding the aforementioned business and trade secrets within the meaning of Section 2(1) GeschGehG in writing. As far as legally required, the supplier is entitled and may be obliged to redact or anonymise certain information in the relevant documents.

## Section 22 · Withdrawal and right of retention

If it becomes apparent after conclusion of contract (e.g. by applying for the instigation of insolvency proceedings in respect of the assets of the supplier) that (contractual) performance claims of DMK are



at risk, DMK is entitled to withhold payment claims of the supplier in accordance with the statutory provisions and – if necessary after setting a grace period – to withdraw from the contract (Section 321 BGB). The statutory provisions on the dispensability of setting a grace period remain unaffected.

### **Section 23 · DMK Supplier Code of Conduct**

1. The supplier undertakes to comply with and implement in full the requirements of the German Supply Chain Duty of Care Act (LkSG) and the DMK Supplier Code of Conduct. This applies in particular to the supplier's own business area and to any direct or indirect suppliers in accordance with the regulations standardised in the LkSG. More detailed regulations in connection with the requirements of the LkSG are provided in the DMK Supplier Code of Conduct, which shall become part of the contract concluded between DMK and the supplier. The current version of the DMK Supplier Code of Conduct can be viewed and accessed at [www.dmk.de/supplier-coc](http://www.dmk.de/supplier-coc) and shall also be made available to the supplier free of charge by the ordering DMK company at any time on first request.
2. Within the scope of its legal options, the supplier shall ensure that its sub-suppliers fully comply with and implement the requirements of the LkSG and the DMK Supplier Code of Conduct.
3. The supplier is obliged to keep itself continuously informed about the conditions of the latest version of the DMK Supplier Code of Conduct without being asked to do so. The information is available to the supplier free of charge. Failure to comply with this constitutes a material breach of contract by the supplier.
4. With regard to compliance with and implementation of the requirements of the LkSG and the DMK Supplier Code of Conduct, DMK is entitled, but not obliged, to conduct training courses with the supplier. In addition, DMK is entitled to carry out an audit of the supplier itself or to have it carried out by an expert and/or consultant appointed by DMK and obliged to maintain confidentiality. This includes a review of the supplier's operations and a subsequent evaluation. The knowledge gained in this process is used as the basis for the risk analysis by DMK.
5. The supplier shall document compliance with and implementation of the requirements of the DMK Supplier Code of Conduct, in particular the social, energy and environmental standards, and, at the request of DMK, demonstrate this to the ordering DMK company at any time by means of verifiable documents.
6. The supplier undertakes to inform its freelance and permanent employees and other third parties commissioned by it – whether in its own or someone else's name – about any reporting procedure. The reporting procedure shall enable persons to point out human rights and environmental risks and violations of human rights-related or environmental obligations that have arisen as a result of the supplier's economic actions in its own business area or those of a direct supplier of the supplier.
7. The supplier is obliged to inform DMK immediately about significant changes in the human rights and environmental risks in its business area which arise, for example, as a result of the introduction of new products, projects or a new business area.
8. If the breach of an obligation specified in the LkSG or in the DMK Supplier Code of Conduct by the supplier is such that DMK cannot put an end to it in the foreseeable future, DMK is entitled to temporarily suspend the business relationship during its efforts to minimise the risk.
9. In the event of a culpable infringement by the supplier of the provisions of the LkSG or the DMK Supplier Code of Conduct, DMK is entitled to terminate the contractual relationship for good cause without observing a notice period after the unsuccessful expiry of a grace period for remedial action or after an unsuccessful warning with a remedial period of at least 14 calendar days. Section 314 BGB (Termination in the case of continuing obligations) remains unaffected. The entitlement of DMK to claim damages is not excluded by the termination.
10. If a claim is made against DMK by a third party due to a violation of the provisions of the LkSG or the DMK Supplier Code of Conduct and if this is based on a culpable breach of duty attributable to the



supplier against the obligations agreed with DMK, the supplier is obliged to indemnify DMK against said claims on first request. The obligation to indemnify also refers to all expenses that DMK necessarily incurs from or in connection with the claim by the third party.

#### **Section 24 · Sanctions lists**

1. In addition, the supplier warrants, within the scope of what is legally possible, that
  - a. neither the supplier itself nor persons, organisations or entities with which the supplier has business relationships (hereinafter referred to as “Relevant Persons”) appear on a sanctions list maintained by the United Nations, the European Union, its respective Member States, the United Kingdom, the United States of America or the respective competent government agencies and authorities of the above states or federations of states (in their latest version; hereinafter referred to as “Sanctions Lists”);
  - b. the supplier shall immediately notify DMK in writing if the supplier or a Relevant Person is placed on one of the aforementioned Sanctions Lists;
  - c. the supplier carries out its business activities in accordance with the applicable anti-corruption laws and applicable sanctions and has implemented adequate internal processes and measures for this purpose;
  - d. the supplier does not use the funds, products and services received from DMK for the benefit of sanctioned persons, insofar as this would lead to a violation of applicable sanctions, or for other purposes not compatible with applicable sanctions; and
  - e. neither the supplier itself nor any of the Relevant Persons pays funds to third parties (in particular to politically exposed persons) without authorisation, as far as this is liable to motivate this person to engage in dishonest conduct.
2. DMK may terminate this contract in accordance with the statutory provisions by written declaration to the supplier, if (i) the supplier or one of the Relevant Persons is listed on a Sanctions List and DMK is thereby exposed to the risk of a not insignificant sanction by public authorities; or (ii) the supplier or one of the Relevant Persons commits a not insignificant violation of applicable anti-corruption laws or sanctions and this breach of obligation is not remedied in due time after a written warning and reasonable grace period set by DMK (a warning and grace period is not necessary if it has been established by a final judgment or in another form of final termination of proceedings that the supplier or one of the Relevant Persons is guilty of such a breach); or (iii) the supplier – insofar as is reasonable for DMK, only – seriously or persistently violates the provisions of this clause after unsuccessful expiry of a reasonable grace period to remedy any such breaches. The supplier shall fully indemnify DMK against all damages, losses, claims and actions by third parties arising from or in connection with the termination. Further rights, in particular to damages, remain unaffected by this.

#### **Section 25 · Environmental protection/Occupational safety/Energy**

The supplier undertakes to provide its contractual services in constant compliance with current labour and environmental protection law, energy law and the standards/directives applicable in the aforementioned areas of law. This obliges it in particular to select environmentally friendly and recyclable raw materials, use low-emission and low-pollutant technologies, use designs that can easily be dismantled and disassembled and implement solutions that save energy and protect resources. The requirements of the EC Machinery Directive 2006/42/EC apply to the supply of new or used machines, individual components, partial and/or complete systems. The systems and devices to be built, including the electrical equipment, must in particular comply with the requirements of EU Directive 2014/34 /EU (Atex), the Hazardous Substances Ordinance, the Industrial Safety Ordinance and any other applicable directives and standards (DIN/VDE/VDI regulations, professional association regulations). When carrying out activities on the premises of a company of the DMK Group, all requirements of occupational health and safety and environmental protection must be reliably observed, otherwise removal from the premises is possible.



## **Section 26 · Final provisions**

1. The business relationship existing with DMK may only be referred to for advertising purposes or as a reference to third parties with the express written consent of DMK.
2. No tacit, verbal or written ancillary agreements have been made. Changes and additions to this Terms and Conditions shall be made in writing. This also applies to a cancellation or waiver of this requirement of written form.
3. The written form shall be deemed to have been complied with in the case of declarations transmitted by telecommunication or electronically if the transmitted declaration contains a signature authorised by the issuer; in this case, the subsequent transmission of a duly signed declaration cannot be requested.
4. Should any provision of these Terms and Conditions be invalid or unenforceable or become invalid or unenforceable in the future, this shall not affect the remaining provisions of this contract. In place of the ineffective or unenforceable provision, the parties hereby undertake to agree to an effective provision that comes as close as possible to the meaning and purpose of the ineffective or unenforceable provision, both legally and economically. The same applies to any loopholes in this contract.
5. The law of the Federal Republic of Germany applies exclusively. If the requirements of Art. 1, 3 CISG are met, the provisions of the UN Sales Convention (CISG) also apply.
6. The place of performance for both parties and the exclusive place of jurisdiction for all disputes arising from the contractual relationship is the headquarters of DMK. However, DMK is also entitled, at its discretion, to take action against the supplier at its registered office or at the place of performance of the service (place of performance).
7. References to statutory provisions, regulations, directives and other standards in these Terms and Conditions are to be understood as references to the current version of the respective provisions.
8. The contractual partners are aware of the particular importance of data protection and data backup. They are therefore obliged to continuously check, update and observe the rules of data protection and data backup and ensure their practical implementation.

**DMK Group May 2022**