



## General Terms and Conditions of Purchase

### 1. Scope of Application

- 1.1 These General Terms and Conditions of Purchase (hereinafter, the “**Terms**”) shall apply to the current contract or order between a company of the **Meyer Burger Group** (“**Purchaser**”) and the Supplier of the services or goods being supplied under the contract or order (“**Supplier**”) and, if applicable, as a framework agreement for any and all future contracts or orders for the provision of goods and services between the parties, unless agreed otherwise by the parties in writing. Any and all goods, equipment, materials and services under any Purchase Order between the parties, including future offers and other related services (hereinafter collectively referred to as the “**Deliverables**”) are provided on the basis of these Terms, unless otherwise agreed by the parties in writing.
- 1.2 These Terms shall apply exclusively; any and all conflicting or inconsistent terms or conditions shall not apply unless the Purchaser has expressly agreed to their application in writing. This includes any of the Supplier’s pre-printed terms and conditions on any proposal or any online terms and conditions.
- 1.3 For ease of reference, any contract or order between the parties that are subject to these Terms shall be referred to herein as the “**Purchase Order**”.

### 2. Contract Acceptance

- 2.1 Order confirmations or acknowledgements for a Purchase Order, including any amendments or supplements, shall only be binding if they have been issued by a party in writing. Verbal agreements of any kind must be confirmed in writing by the parties in order to be valid and effective.
- 2.2 A Purchase Order is concluded at the latest when an order is confirmed by the parties in writing or if the Purchaser accepts the Deliverables without express reservation. If the Purchaser does not receive the Supplier’s order confirmation within five (5) business days after receipt of an order from the Purchaser, the Purchaser is entitled to cancel the order without liability.
- 2.3 Any changes or modifications to a Purchase Order or any applicable terms and conditions, including these Terms, must be confirmed in writing by the party to be charged in order to be valid and effective.
- 2.4 Unless agreed otherwise in writing, cost estimates, preparation of offers, and the delivery of associated plans, samples, and models provided by the Supplier are for the Purchaser’s use and information and shall not be compensated by the Purchaser.

### 3. Price; Terms of Payment

- 3.1 The agreed prices are binding and are to be understood as DDP, unless otherwise designated by the Purchaser in the Purchase Order or otherwise in writing, as further provided in Section 4 of these Terms.
- 3.2 Unless otherwise agreed in the Purchase Order, the Purchaser shall make payment no later than 120 days after Purchaser’s receipt of all Deliverables that conform to the requirements of the Purchase Order and after receipt of

a proper invoice. The receipt of a transfer order by the Purchaser’s bank is sufficient for the timeliness of the transfer. The Supplier shall bear the bank charges and expenses associated with the wire transfer or other electronic payment.

- 3.3 Unless otherwise directed by the Purchaser, all invoices must contain the following information: Order reference, order and material number, documents concerning the performance of services (handover certificate, delivery note, etc.), itemized statement of all taxes, fees, customs duties, etc., indication of whether it covers a partial or complete delivery of the Deliverables, and the country of origin for each item of goods.
- 3.4 Payments made by the Purchaser shall not constitute acceptance under the Purchase Order or an acknowledgment that the Deliverables conform to the requirements of the Purchase Order.
- 3.5 Unless otherwise specified in the Purchase Order, all amounts invoiced by the Supplier will be deemed delinquent only if the Supplier has provided written notice of the delinquency and given the Purchaser a reasonable opportunity to cure, but in no event less than 30 days of the Purchaser’s receipt of the delinquency notice. Any interest on the delinquent amounts shall only accrue after the expiration of the cure period under the notice of delinquency and shall not exceed the statutory interest rate under New York law.
- 3.6 The assignment of any claims of the Supplier against the Purchaser arising from or in connection with the Purchase Order are strictly prohibited and shall be of no force or effect.

### 4. Delivery Terms

- 4.1 Unless otherwise specified in the Purchase Order, “**Delivery**” under the Purchase Order will mean delivery by the Supplier DDP to the destination specified by the Purchaser in the Purchase Order, all at the risk and expense of the Supplier.
- 4.2 If the parties have agreed to any other delivery term permitted under the INCOTERMS, such term must be confirmed in writing, including any effect on pricing, before it becomes binding upon the Purchaser.
- 4.3 Each shipment of any Deliverables must be accompanied by a packing slip and two delivery notes stating the order and order number.
- 4.4 The Supplier will ensure that the delivery of the Deliverables will comply with any applicable import and export laws, customs clearances, etc.
- 4.5 The Supplier shall pack and ship the Deliverables to ensure their safe and secure transport. The Supplier shall notify the Purchaser in writing if any special handling or safety procedures should be observed for the handling of the Deliverable, if the Deliverables are subject to any export and/or import restrictions under applicable law, or if the Deliverables may involve greater than normal health, safety or environmental risks.

- 4.6 The Supplier warrants that it will not supply the Purchaser with any materials, substances, components or other products that violate any applicable import or export bans or restrictions, including but not limited to those rules or regulations imposed by either the European Union or the USA.
- 5. Delivery Dates; Delays**
- 5.1 Agreed delivery dates and periods specified in the Purchase Order or otherwise in writing (hereinafter "**Delivery Dates**") are binding. TIME IS OF THE ESSENCE FOR ALL DELIVERY DATES. Compliance with the agreed Delivery Dates shall be determined by the timely delivery of the Deliverables by the Supplier at the agreed place of destination in accordance with Section 4.1. Delivery before the agreed time is only permitted with the written consent of the Purchaser.
- 5.2 The Supplier must inform the Purchaser in writing immediately of any foreseeable delays in delivery, stating the reason and expected duration of the delay; provided, however, that the Purchaser's claims (if any) due to the delay in delivery remain unaffected by such notice.
- 5.3 To the extent the Supplier is responsible for a delay in delivery, the Purchaser shall be entitled to claim liquidated damages equal to 1% of the net price agreed for the Deliverable for week of delay, up to a maximum amount of 5% of the net price agreed for the Delivery. Such liquidated damages shall be in addition to, not in lieu of, any other rights and remedies of the Purchaser arising out of the delay.
- 5.4 The parties acknowledge and agree that the terms of the Purchase Order with respect to liquidated damages are fair and reasonable considering the damage the Purchaser would sustain in the event of the Supplier's failure to timely perform as required, that such damages have been agreed upon as liquidated damages because of the difficulty of ascertaining as of the date hereof the exact damages that would be sustained by the Purchaser, and that such liquidated damages shall apply regardless of the actual amount of damages sustained. All such amounts will be paid as agreed-upon liquidated damages and not as a penalty.
- 5.5 Any delay in performance by a party will be excused if and to the extent caused by an act of God, fire, flood, earthquake, hurricane, or other event or circumstance beyond the control of the affected party; provided, however, that the affected party must promptly notify the other party of the delay and use commercially reasonable efforts to mitigate the effects of the delay.
- 6. Purchaser's Plans and Know-how**
- 6.1 Materials, substances, tools, and other means of production or items such as containers or special packaging (hereinafter referred to as "**Supplies**") made available by the Purchaser to the Supplier, shall remain the property of the Purchaser. They may only be used as intended and exclusively for the Purchaser's orders. Any and all Supplies must be returned to the Purchaser immediately after termination or expiration of the relevant Purchase Order.
- 6.2 The Supplier is obliged to carry out any and all necessary maintenance and inspection work as well as servicing and repair work on the Supplies in good time and at its own expense. The Supplier must notify the Purchaser immediately of any problems involving the Supplies.
- 6.3 The Supplier shall bear the risk of loss, destruction or damage to the Supplies. The Supplier is obliged to insure the Supplies at replacement value at its own expense against the usual risks such as theft, fire, water, breakage, and other damage. At the same time, the Supplier hereby authorizes the Purchaser to pursue any and all indemnity claims under these insurance policies.
- 6.4 Any and all rights to plans, drawings, business or technical documents, software, other know-how, or other records and documents which the Purchaser provides to the Supplier shall remain the intellectual property of the Purchaser. The Supplier may only use these documents and any and all related information for the intended purpose.
- 7. Quality Assurance**
- 7.1 The Supplier shall inspect any and all drawings, calculations, specifications and other documents of the Purchaser for any errors or discrepancies within the framework of the Supplier's general and specific expert knowledge. The Supplier shall immediately notify the Purchaser of any concerns, including those regarding the suitability for use stipulated in the Purchase Order or as otherwise intended by the Purchaser.
- 7.2 The Supplier must maintain a quality assurance system which complies with the latest standards of the relevant supplier industry. The Supplier shall execute the quality assurance measures including the necessary documentation at its own responsibility. The Supplier shall make this documentation available to the Purchaser upon request. The documentation must be retained by the Supplier in accordance with any applicable legal requirements, but for at least 5 years.
- 7.3 Prior to delivery, the Supplier shall conduct an outgoing goods inspection with due care. Deliveries which have not passed such an inspection may not be shipped to the Purchaser.
- 7.4 Unless otherwise agreed by the Purchaser, for a period of 10 years as of the provision of the Deliverables to the Purchaser, the Supplier shall keep spare parts of identical construction in stock and available to the Purchaser for purchase at the Supplier's standard rates.
- 8. Warranty; Exclusions**
- 8.1 For a period of 12 months from the date of the Supplier's delivery of the Deliverables or such other period as may be stated in the Purchase Order, the Supplier warrants that the Deliverables will be new, free of defects in design, materials and workmanship and will strictly conform to the requirements of the Purchase Order and all applicable laws and regulations.
- 8.2 The Supplier also warrants that it has title to and the right to sell the Deliverables, and upon the Purchaser's pay-

ment in accordance with the terms of the Purchase Order, there will be no liens, claims or encumbrances against or applicable to the Deliverables.

- 8.3 If the Deliverables do not conform to the above warranty in any respect, the Supplier will repair or replace, at the Purchaser's option, the non-conforming Deliverables.

## 9. Title; Intellectual Property

- 9.1 To the fullest extent permitted by law, title to the Deliverables will pass to the Purchaser upon delivery.
- 9.2 Risk of loss will transfer to the Purchaser upon its acceptance of the Deliverables.
- 9.3 Upon payment in accordance with the Purchase Order, or as otherwise agreed by the parties in writing, the Purchaser will obtain all intellectual property rights in any proprietary technology or proprietary information included as part of the Deliverables.

## 10. Cancellation

- 10.1 No cancellation charges will apply to any order cancelled or terminated by the Purchaser to the extent the termination is based on the Supplier's failure to comply with its obligations under the Purchase Order.
- 10.2 In addition to any other remedies that may be available under applicable law, the Purchaser may terminate the Purchase Order with immediate effect upon notice to the Purchaser, if the Purchaser: (a) fails to perform under the Purchase Order or otherwise comply with any of these Terms, in whole or in part; or (b) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of its creditors.

## 11. Indemnification; Insurance

- 11.1 To the fullest extent permitted by applicable law, the Supplier shall indemnify, defend and hold harmless the Purchaser and its directors, officers, employees, representatives, agents and affiliates, against and from any and all losses and damages (including reasonable attorney's fees and expenses) resulting from claims for personal injury, property damage or other claims caused by the Supplier's delivery of defective or non-conforming Deliverables or other failure to fulfill its obligations under the Purchase Order.
- 11.2 This Section will survive the expiration, cancellation or termination of the Purchase Order.
- 11.3 Without prejudice to other claims of the Purchaser, the Supplier is obliged to maintain commercial general liability insurance and product liability insurance on commercially reasonable terms and policy limits, or as otherwise required under the Purchase Order.

## 12. Confidentiality

- 12.1 All non-public, confidential or proprietary information of the Purchaser or its affiliates, including but not limited to specifications, samples, designs, plans or drawings, whether disclosed in writing or verbally, and whether or

not marked or otherwise identified as "confidential", relating to the Deliverables or otherwise disclosed to the Supplier in connection with the Purchase Order is hereby deemed "**Confidential Information**".

- 12.2 The Supplier will not disclose to any third party any such Confidential Information except to the extent specifically contemplated under the Purchase Order or as may be otherwise authorized by the Purchaser in writing.

- 12.3 Notwithstanding the foregoing, this Section does not apply to information that is: (a) in the public domain or becomes known to the general public through no fault of the Supplier; (b) known to the Supplier at the time of disclosure as confirmed by written records; or (c) rightfully obtained by the Supplier on a non-confidential basis from a third party.

- 12.4 The Supplier acknowledges that any breach or threatened breach of this Section may cause irreparable harm to the Purchaser for which there is no adequate remedy at law, and the Purchaser will therefore be entitled to obtain from any court of competent jurisdiction an injunction, restraining order or other equitable relief, restraining any such breach.

- 12.5 If the Supplier is required by law (pursuant to legal proceedings, subpoena, or other similar process) to disclose any Confidential Information, the Supplier shall promptly notify the Purchaser in writing and cooperate to the extent the Purchaser seeks to obtain a protective order or other appropriate remedy.

- 12.6 This Section will survive the expiration, cancellation or termination of the Purchase Order.

## 13. Export Control

- 13.1 The parties acknowledge that, if applicable, the Deliverables may be subject to export and import regulations and restrictions. The Supplier shall comply with any and all applicable export and import control regulations, including those of the European Union and the USA to the extent applicable.

- 13.2 If requested by the Purchaser, the Supplier will provide all relevant information concerning any applicable export and import regulations, and will cooperate with the Purchaser to ensure compliance with all such regulations.

- 13.3 The fulfillment of the Purchase Order by the Purchaser is subject to the proviso that there must be no obstacles or restrictions to such fulfillment due to national or international export and import regulations or any other legal regulations.

## 14. General Provisions

- 14.1 The Purchase Order, together with these Terms and any attachments and documents incorporated into the Purchase Order by reference, constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and merges and supersedes all negotiations, prior or contemporaneous discussions, agreements, understandings, promises or representations, whether written or oral, relating to such subject matter.

- 14.2 The Purchase Order may not be modified, amended or varied except by a writing signed by an authorized representative of the Purchaser. The failure of a party to insist upon strict performance of any term or condition of the Purchase Order in any one or more instances will not be deemed a waiver of such party's right to later enforce such term or condition.
- 14.3 In the event of a conflict or inconsistency in the terms of the Purchase Order, the following order of priority will apply: (1) the face page of the Purchase Order, (2) these Terms and Conditions, (3) any attachments to the Purchase Order, and (4) any documents incorporated by reference into the Purchase Order.
- 14.4 Should any provision of these Terms be deemed invalid or otherwise unenforceable, that shall not affect the validity of the other provisions. The invalid provision shall be replaced by a legally valid provision which comes as close as possible to the purpose and intent of the invalid provision.
- 14.5 The Purchase Order may not be assigned by the Supplier without the prior written consent of an authorized representative of the Purchaser. Any purported assignment in violation of this paragraph will be void and of no force or effect.
- 14.6 All notices under the Purchase Order must be in writing and sent to a party at the address listed for it in the Purchase Order or such other address as a party may designate in writing. Notices must be given by: (a) certified mail, return receipt requested; (b) reputable air courier (such as Fed-Ex or DHL) or (c) email, with a confirmation sent by certified mail, return receipt requested, or air courier.
- 15. Governing Law**
- 15.1 The Purchase Order will be governed by and enforced in accordance with the laws of the State of New York, other than its choice of law rules. The terms of Article 2 of the Uniform Commercial Code will apply to the Purchase Order irrespective of whether the transaction hereunder is deemed to be a sale of goods or providing of a service. However, in the event of a conflict, the terms of the Purchase Order will control over those contained in the UCC.
- 15.2 For the avoidance of doubt, the parties hereby exclude the application of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 16. Site Services**
- 16.1 If the Deliverables include any site services to be performed by the Supplier at the Purchaser's premises, such services will be invoiced by the Supplier at the Supplier's standard rates, unless otherwise provided in the Purchase Order.
- 16.2 In performing any such site services, the Supplier shall exercise that degree of care, skill and judgment standard in the industry for firms engaged in the performance of similar services. If, during the performance of such services or for 12 months thereafter, any portion of the services fails to conform to the above warranty, the Supplier shall, at its sole expense, promptly correct or re-perform the deficient portion of the services as directed by the Purchaser.