

## General Terms and Conditions of Sales of Hilcona AG

### A. Introduction

**A.1** These General Terms and Conditions of Sales (“**GTCS**”) become a part of every contract between Hilcona AG, with its registered office at Bendererstrasse 21, 9494 Schaan, Principality of Liechtenstein (the “**Seller**”), and the respective buyer specified in the contract (the “**Customer**”), even if the Seller does not expressly refer to these GTCS in the context of its offer, order confirmation, documents accompanying the delivery or elsewhere. Contracts may also be concluded orally, by e-mail, fax or by other means.

**A.2** The Customer’s general terms and conditions shall not apply, not even if the Customer refers to or attaches its general terms and conditions in connection with a request for quotation or purchase order in an e-mail or elsewhere and the Seller does not expressly object.

### B. Term of a contract

**B.1** If a contract has been concluded for an indefinite term, it may be terminated by either party without stating a reason by giving a three (3) months’ notice ending at the end of a calendar quarter.

**B.2** Either party may also terminate a contract by a written notice without any notice period if the other party breaches any material provision of the contract and/or these GTCS and fails to remedy the breach as well as the damage and losses thus incurred within fourteen (14) calendar days of receipt of a corresponding written notification.

### C. Purchase orders

**C.1** Purchase orders and agreements should be made in writing; a message sent by e-mail or fax is deemed to suffice to comply with the requirement for written form. The same applies to any supplements, amendments and ancillary agreements. However, this shall not prejudice the effectivity of oral contracts (e.g. concluded by telephone) or implied contracts.

**C.2** A purchase order is binding on the Customer for a period of thirty (30) days. Within this period, the Seller may accept the order in written, oral or implied form (e.g. by making delivery or issuing a request for collection).

**C.3** If the Seller decides to send the Customer an order confirmation in writing (including by e-mail or fax) and if the confirmation differs from the Customer’s order, the Customer must object within two (2) working days of its receipt, otherwise the contract shall be deemed to have been concluded under the conditions notified by the Seller.

**C.4** Unless expressly provided otherwise in offers, order confirmations, price lists or other documents of the Seller, all prices are exclusive of VAT.

### D. Delivery

**D.1** Unless the Seller specifies otherwise in the contract, in its offer, a price list, an order confirmation or elsewhere, the provisions of **Incoterms 2020, DDP, Customer’s Delivery Address**, shall apply to all deliveries.

**D.2** Delivery dates are always non-binding unless a delivery date is explicitly guaranteed by the Seller in writing in an individual case. The Seller shall strive to make the delivery in the calendar week requested by the Customer as the delivery period. “Delivery date” means the moment when the goods are handed over to the Customer in accordance with the applicable Incoterms.

**D.3** The Seller shall inform the Customer of the delivery date in writing (including by e-mail or fax) or by telephone if this is indicated, customary in the industry and possible in individual cases. The Customer is then obliged to have the capacities necessary for (un)loading of the goods available on the date notified for receipt of the goods and to be otherwise prepared to take over the goods.

**D.4** Deliveries of higher or lower quantities, as well as partial deliveries, are permitted to the Seller to a maximum extent of 5% unless the Customer cannot be reasonably expected to accept the deviation in quantity taking into account the overall circumstances. The Customer shall always pay for the quantity that was actually delivered.

**D.5** The Seller is entitled not to manufacture and/or deliver the goods ordered by the Customer if the Customer is in default with the fulfilment of its obligations, in particular with its payment obligations. In such a case,

the Seller may store the goods already manufactured (completely or partially) at the Customer’s expense and risk.

**D.6** The Customer shall check the suitability of the goods for their intended purpose by performing its own tests.

**D.7** The Seller shall be released from its obligation to manufacture and/or deliver the goods in the event of *force majeure*, i.e. a circumstance which the Seller cannot significantly influence in terms of preventing it from happening, changing its duration or removing it. *Force majeure* includes, without limitation, natural forces, wars, civil unrest, strikes, lockouts, destruction/damage of production facilities or plants, closure of borders, restrictions on the movement of goods, sanction lists, export/import restrictions, non-delivery, late delivery or poor delivery on the part of the Seller’s suppliers, as well as official or statutory measures adopted to combat epidemics or pandemics.

### E. Specifications

**E.1** All statutory and product-specific information is presented to the Customer and the end user transparently, by means of product labelling and product specifications. Apart from the information required by law, product specifications may contain additional information. This information is included in the lists of components. The currently applicable versions of specifications are available from GS1 or - if a particular company or subdivision does not work with GS1 - are made available by other means.

**E.2** Insofar as standard products are concerned, the Seller is always entitled to make changes relevant for the specifications. If the Seller has to make changes relevant for the specifications, in particular if a change is made due to a legal or official order or a raw, auxiliary or operating material not being available or permitted (in whole or in part), and if the Customer does not grant its consent to this change, the Seller may revoke confirmed purchase orders. If the Customer refuses to give its consent without a substantial reason, the Customer shall compensate the Seller for the costs and damage incurred by the Seller.

### F. Reservation of ownership title

The goods shall remain the property of the Seller until they have been paid in full. As long as the Customer complies with its obligations under the contract and/or these GTCS, the Customer is entitled to process and resell the goods within its usual business operations.

### G. Forecasts

**G.1** If the parties decide to prepare forecasts, they will update such forecasts on a regular basis. The Customer acknowledges that, for operational reasons, it is necessary for the Seller to stock the raw, auxiliary, operating and packaging material necessary for the manufacture of the goods in order to ensure the Seller’s ability to deliver the goods.

**G.2** If the Seller still has raw materials or packaging material that can be used exclusively in connection with the Customer (“*single-use inventory*”) at the end of their business relationship, the Customer shall reimburse the Seller for the corresponding acquisition costs.

### H. Prevention of food waste

If the Seller manufactures goods exclusively tailored for the Customer (e.g. goods under the Customer’s trademarks), the Seller may not sell such goods to third parties. There is an exception to this rule in cases where the Seller has already started or even completed production of the goods in good faith based on non-binding forecasts and the Customer does not demand all these goods or part thereof in time and, as a result, the marketability of the goods is jeopardised. In this case, such “**overproduction**” may be sold or given away by the Seller through social services, sales to employees, outlets and/or the secondary market.

### I. Liability of the Seller

**I.1** Goods shall be deemed defective if they substantially differ from the agreed specifications at the time of delivery in accordance with the applicable Incoterms unless the Seller is entitled to deviate from the specifications pursuant to paragraph E.

**I.2** The Customer is obliged to notify the Seller in writing of obvious defects (in particular, damage to the packaging or the goods, deliveries of higher or lower quantities) without undue delay, but not later than within three (3) days of the date of delivery in accordance with the applicable

Incoterms. In case of hidden defects, the Customer shall file the complaint within three (3) business days of the date on which the Customer (including its employees, legal representatives or other third parties involved in the Customer's business operations) learned about the defect or must have learned about the defect when exercising due managerial care. The Customer's warranty claims shall expire with the expiry of the period for reporting defects.

**I.3** If the Customer has notified defects in due time, the Seller may, at its own discretion, either replace the defective goods with goods that are free of defects or refund the purchase price paid by the Customer for the defective goods; this does not apply if the Seller knew that the Customer would only need the goods on a specific date – in such a case, the Seller may not deliver new goods and only has the obligation to refund the value of the defective goods. The Customer is not entitled to any right of choice or further or other claims in connection with the warranty claims. The Customer waives any claims relating to any substitute purchases.

**I.4** If any damage is present at the time of delivery in accordance with the applicable Incoterms and

- (a) if the damage was caused intentionally or by gross negligence on the part of the Seller, the Seller shall be liable for any damage incurred by the Customer as a result as well as any costs in connection with a product recall that may be ordered by law or by the authorities;
- (b) if the damage was caused by slight negligence on the part of the Seller, the Seller shall be liable for the direct, foreseeable damage incurred by the Customer up to a maximum of 5% of the net sales price of the defective goods;
- (c) if the damage was not caused by the Seller, the Seller shall only be liable insofar as mandatory law establishes liability of a seller independent of culpability.

**I.5** No provision of these GTCS shall be construed as limiting liability in the event that the Seller is liable under mandatory product liability regulations, in the event of culpable injury or death caused by the Seller or in the event of any other unlimited liability of a seller imposed by law.

**I.6** If the defect which resulted in damage to the Customer or a third party did not exist at the time of delivery in accordance with the applicable Incoterms and if the Seller's liability in this respect does not apply, the Customer shall indemnify the Seller against all claims, damages, penalties, fines, harm and costs incurred by the Seller in this connection.

**I.7** Claims lodged by the Customer in writing in due time in accordance with paragraph I.2 shall become time-barred within six (6) months from the date of delivery in accordance with the applicable Incoterms, but not before the expiry of three (3) months after the expiration date of the product. The specifications may establish different dates and time periods which shall have precedence over this paragraph I.7.

## **J. Billing and terms**

**J.1** Invoices shall be sent by the Seller in electronic form to the e-mail address or to the postal address of the Customer specified to the Seller. The Customer is obliged to raise any objections against an invoice in writing to the Seller within five (5) business days of receipt; after expiry of this deadline, the Customer's right to object expires.

**J.2** Unless expressly agreed otherwise, invoices shall be payable within fourteen (14) days of receipt by the Customer. If the Customer is in default with a payment, the Seller may also charge default interest in the amount of 8% p.a. on the part of the invoice which has not been paid in due time. If the Seller issues reminders, the Seller is entitled to charge an additional handling fee of CHF/EUR 50 for each reminder from the 2<sup>nd</sup> reminder onwards.

**J.3** If an invoice is partially disputed by the Customer, the Customer is obliged to pay the undisputed part of the invoice by the due date, irrespective of the further progress of the discussions.

**J.4** The Customer shall only be entitled to a set-off against the claims of the Seller if the Customer's claims against the Seller have been established by a court of law or are undisputed by the Seller.

**J.5** The Customer may not assign, in whole or in part, any alleged or existing claims (including any future or conditional claims) against the Seller to any third party or to provide any such claim as security.

## **K. Compliance**

**K.1** When processing personal data, the Customer agrees to comply with the legal regulations applicable to such a procedure. The Customer has become acquainted with the Seller's declaration on personal data protection<sup>1</sup> and agrees to inform its employees about the declaration on personal data protection.

**K.2** The Customer agrees to conduct its business activities in accordance with the legal requirements, while taking into account compliance issues such as employee protection, sustainability, environmental protection and animal welfare, and as a minimum, comply with the *Code of Conduct*<sup>2</sup> of the Bell Food Group.

## **L. Intellectual property**

**L.1** The Seller shall remain the sole owner of all intellectual property rights with respect to the goods, in particular recipes, specifications, technologies, processes, procedures, concepts (application concepts, recipe folders, images and photos) and ideas (the "**Seller's Intellectual Property**"), unless they are the Customer's own trademarks; in the case of the Customer's own trademarks, the parties shall make separate arrangements.

**L.2** The Customer is prohibited from using the Seller's Intellectual Property outside the business relationship established with the Seller, in particular from applying for industrial property rights thereto or registering Internet domains. Any intellectual property rights applied for or Internet domains registered at variance with this paragraph L.2 shall be transferred by the Customer to the Seller against payment of an amount of CHF/EUR 1 within ten (10) days of receipt of a request to that effect.

**L.3** The Customer may not manufacture the goods itself or have them manufactured by a third party, including in a modified form that is essentially identical to the goods of the Seller.

## **M. Final provisions**

**M.1** The present document is governed by the laws of the country in which the Seller has its registered office to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

**M.2** The place of jurisdiction is the registered office of the Seller.

<sup>1</sup> Available at: <https://www.hilcona.com/en/data-protection-policy/>

<sup>2</sup> Available at: <https://www.hilcona.com/en/code-of-conduct/>