

# **PEPSICO – GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF SERVICES**

## **1. DEFINITIONS**

The following definitions shall apply in these Terms and Conditions:

"Buyer" shall mean anyone placing the Order.

"Services" shall mean the services which are the subject matter of the Order.

"Order" shall mean the Buyer's order for the Services.

"Supplier" shall mean the person, firm, or company receiving the Order.

## **2. ACCEPTANCE OF THE ORDER**

These General Terms and Conditions of Purchase shall be part of the Order. The Supplier's commencement of the provision of the Services under the Order shall be deemed to be the Supplier's acceptance of the Order.

THE SUPPLIER'S ACCEPTANCE OF THE ORDER SHALL BE LIMITED TO THE ACCEPTANCE OF THESE GENERAL TERMS AND CONDITIONS OF PURCHASE AND IT SHALL NOT TAKE INTO ACCOUNT ANY TERMS AND CONDITIONS OF THE SUPPLIER IN ADDITION TO OR DIFFERENT FROM THESE GENERAL TERMS AND CONDITIONS OF PURCHASE.

## **3. COMPLETION**

Time is of the essence for any performance of terms and conditions communicated to the Supplier by the Buyer and the Supplier should meet the performance dates. If the Supplier fails to meet the performance dates, the Buyer may, without liability and without prejudice to any other rights and remedies it may have under these General Terms and Conditions, after having unsuccessfully requested the Supplier in writing (sending a request by e-mail shall be deemed written form) to complete the services by the date set:

- (a) cancel the Order [by notice] to the Supplier effective upon delivery in respect of the Services not yet rendered;
- (b) refuse to allow any attempts by the Supplier to provide the Services after the date set by the Buyer; and
- (c) buy substitute Services elsewhere and charge the Supplier with any additional reasonable costs incurred.

## **4. QUALITY/PERFORMANCE**

The Supplier guarantees that the Services shall:

- (a) be provided by suitably experienced, qualified, and trained staff with all reasonable care, skill and urgency and in accordance with generally accepted commercial practices and industry standards for similar services;
- (b) conform in all respects to (i) the terms and conditions of the Order, (ii) any performance criteria and specifications communicated by the Buyer, and (iii) any descriptions and specifications of the Buyer provided to the Supplier, including any and all project proposals, specifications, and plans;
- (c) not infringe any intellectual property rights of any third party; and
- (d) comply with the legislation of the European Community (including, but not limited to, the health and safety legislation) and the legislation of any State associated with this Order, in particular the legislation of the State in which the provision of the services will have an effect; The Supplier should notify the Buyer immediately after becoming aware of any amendments to these laws and regulations.

The Buyer's rights under these General Terms and Conditions of Purchase shall apply in addition to the statutory provisions implied in favour of the Buyer by the Supply of Goods and Services Act 1982 and any other acts.

The guarantees provided in these Terms and Conditions shall survive the performance, acceptance, or payment hereunder and shall extend to any substitute or rectification services by the Supplier.

## **5. SUPPLIER'S GUARANTEE. FOOD SAFETY, ENVIRONMENTAL PROTECTION AND OTHER RULES**

The Supplier should, to the extent agreed with the Buyer:

- (a) be committed to PepsiCo's Food Safety and Supplier Guarantee procedures at its own expense;
- (b) meet PepsiCo's Supplier Acceptance and Compliance Programme requirements;
- (c) ensure that all the materials comply with all legal requirements of the EU and its Member States – including, in particular, the requirements concerning guarantees of origin;
- (d) ensure compliance with any agreed and signed specification;
- (e) ensure that all the Goods comply with the requirements of PepsiCo's Raw Material and Food Safety Programme (available on request), including, in particular, the requirements concerning guarantees of origin;
- (f) be committed to the development of environmental protection programmes with the Buyer and, as part of those programmes, participate in such initiatives as the Buyer may from time to time present thereto.

## **6. SUPPLIER CODE OF CONDUCT AND ANTI-CORRUPTION CLAUSE**

1. These Terms and Conditions shall be governed by the following documents and the Supplier agrees to comply with them at all times:

1.1. PepsiCo's Supplier Code of Conduct, available at: [www.pepsico.com/SupplierCodeofConduct](http://www.pepsico.com/SupplierCodeofConduct), as amended by PepsiCo, Inc., and

1.2. PepsiCo's Global Anti-Bribery Compliance Policy available at <http://www.pepsico.com/About/Global-Code-of-Conduct>, as amended by PepsiCo, Inc., the US Foreign Corrupt Practices Act, and any other applicable anti-corruption laws and regulations.

2. The Supplier represents, warrants and guarantees that, to the best of its knowledge, neither it nor any of its officers, nor any other person acting on its behalf, has in the past five years offered, paid or promised for corrupt purposes any gifts, money or any other benefits to the following persons, nor will it do so in the future:

2.1. A Government Official (as defined in the Anti-Bribery Compliance Policy); or

2.2. Any agent of a third party,

in order to improperly influence any act or decision of such a person or Government Official so that they act in breach of their legal obligation, or in order to provide any improper benefit or advantage or to acquire or retain customers.

3. The Supplier represents that none of its shareholders, officers, directors, or employees is a Government Official.

4. The Supplier undertakes to maintain accurate books and records in accordance with all applicable laws and regulations, and generally accepted accounting practices, throughout the term of these Terms and Conditions.

5. The Supplier agrees to notify the Buyer of any known or suspected violation of this provision, to cooperate fully with any investigation by the Supplier, Buyer, or any governmental authority, and to take all necessary steps to remedy any violation.

## **7. RIGHTS OF THE BUYER**

1. Payment for the Services provided under the Order shall not affect the scope of the Supplier's obligations under the guarantees contained herein. Such guarantees shall survive the acceptance and receipt of the Services by the Buyer.
2. The Buyer may monitor, record, and evaluate the performance of the Services, and accept or reject at any time all or any part thereof which, in its opinion, is unsatisfactory or does not conform to any guarantee, unless the Parties agree on a schedule of acceptances and receptions in a separate document.
3. Without prejudice to any other rights and remedies (including, but not limited to, the right to cancel the Order and/or withhold payment of any amounts to the Supplier in connection with non-performance or improper performance of the Services), the Buyer may require the Supplier to promptly perform again or rectify any unsatisfactory or non-conforming Services or to remedy the reason for non-performance of any Services at the Supplier's sole expense, provided that the Buyer notifies the Supplier within a reasonable time that the Services are unsatisfactory or non-conforming.
4. The Buyer shall also have the right to cancel this Order and to use such other remedies as are available to it either under these Terms and Conditions or by law or equity, including, but not limited to, withholding payment to the Supplier and/or obtaining a refund of payments made in advance or tranches of payments made for the Services not performed or not performed properly.
5. The Supplier should pay all documented costs of the Buyer resulting from any of the Supplier's violations hereof, including, without limitation, all costs resulting from sourcing the Services from another supplier.

## **8. PRICE GUARANTEE/FREIGHT CHARGES/DEDUCTIONS**

1. The Supplier guarantees that the prices for the Services shall include all costs and be as favourable as those offered at the time to other customers of a similar size for the same or similar Services. Without the prior written consent of the Buyer, the Supplier must not demand any additional charges, including, without limitation, insurance fees or taxes. If the Supplier offers lower prices for the Services to other customers of a similar size during the Order fulfilment period, the Supplier agrees to apply these lower prices in respect of the Buyer.
2. In the event of the Buyer's claims against the Supplier arising from the Order or the provision of the Services under another Order, the Buyer may deduct the disputed amounts from the amounts due to the Supplier in connection with this Order, i.e., the Remuneration payable to the Supplier will be reduced by the disputed amounts or rebates, discounts, or refunds related to the non-performance or improper performance of any Order being fulfilled by the Supplier for the Buyer, or from another transaction.

## **9. CHANGES**

The Buyer may at any time request a change to the scope or performance of the Services under the Order. Then:

- (a) the Supplier should provide the Buyer within a reasonable time with a written (or e-mail) assessment of:
  - (i) the estimated time necessary for the implementation of the changes;
  - (ii) any necessary changes to the Supplier's prices resulting from the changes; and
  - (iii) any other effect of the changes on the terms and conditions of the Order.
- (b) If the Buyer, after having become aware of the terms and conditions of fulfilment of the changed Order, decides against making the changes, the Order shall remain unchanged, and if
- (c) the Buyer accepts in writing (or by e-mail) the changed terms and conditions of fulfilment of the Order, the Supplier shall be required to fulfil the Order on the accepted changed terms and conditions in terms of prices, Services, and any other relevant terms and conditions of the Order as accepted by the Buyer.

## **10. INDEPENDENT CONTRACTOR**

Both Parties agree that the Supplier, its employees, agents and subcontractors shall provide the services as the Supplier's contractors and not the Buyer's employees, regardless of where the services are provided.

#### **11. INDEMNIFICATION CLAUSE**

Notwithstanding the Supplier's other obligations under law or these Terms and Conditions, the Supplier agrees to indemnify and hold the Buyer harmless against any and all demands, claims, including claims for damages, liability, losses, expenses and costs (including legal costs) arising out of or as a result of any non-performance or delay in the performance of the Services or negligence, non-performance or violation hereof (including a violation of any guarantee) by the Supplier, its agents, employees, or subcontractors. The Supplier should have an adequate TPL insurance cover and the Buyer may require the Supplier to produce a copy of an insurance policy valid at least for the entire period of performance of the Services.

#### **12. CONFIDENTIALITY**

The Supplier should treat as "Confidential Information" any and all classified information obtained from the Buyer, any specifications or other documents of one of the parties in connection with the Order, the fact that the Buyer has contracted for the Supplier to provide the Services, and any other classified information related to the Order. Without the prior written consent of the Buyer, the Supplier shall not disclose any Confidential Information for any purpose other than the fulfilment of the Order.

#### **13. TRANSFER/SUBCONTRACTING**

The Supplier may not transfer or subcontract any part of the Order without the prior written consent of the Buyer, however this provision shall not apply to entrusting the performance of the Services to an entity with which the Supplier has a permanent business relationship (e.g., permanent cooperation under a civil law contract). If the Supplier subcontracts any part of the Order, it should bind each subcontractor with the terms and conditions of the Order; provided, however, that the subcontract will not create or imply a contractual relationship between any subcontractor and the Buyer. The costs of the subcontractors shall be borne by the Supplier.

#### **14. TERMINATION FOR CONVENIENCE**

The Buyer may cancel the Order or any part thereof at its sole discretion and at any time by notifying the Supplier of the fact in writing or by email. Upon receipt of the Order cancellation notice, the Supplier should promptly cease to provide the Services and cause its suppliers and subcontractors to cease to fulfil the Order, in whole or in part, in keeping with the Order cancellation statement received from the Buyer. The Buyer should pay the Supplier's actual and documented direct costs related to the cancellation of the Order, but not the costs that the Supplier could have reasonably avoided.

#### **15. TERMINATION FOR CAUSE**

Notwithstanding any other rights and remedies available to it, the Buyer may withdraw from the terms and conditions including the Order or any part thereof in the event of a serious violation by the Supplier of its obligations. (e.g., legal defects which cannot be remedied, exceeding the deadline for the provision of the Services set by the Buyer in a request; physical defects preventing or making it significantly difficult to use the outcome of the Services). Upon receipt of the Buyer's statement, the Supplier should immediately suspend its work and instruct subcontractors to suspend work to the extent consistent with the withdrawal statement.

#### **16. INTELLECTUAL PROPERTY**

##### **(a) Indemnification**

Upon receipt of the notice, the Supplier should promptly indemnify and hold the Buyer, its intermediaries, customers, and other sellers harmless from any trials, proceedings, claims, liabilities, costs (including legal costs), losses, charges, profits, damages, and settlement costs arising out of or as

a result of any actual or alleged infringement of third parties' intellectual property rights due to a similarity of the design, trademark or method of fixation of the Services provided under the Order, and, to the extent that it is legally permissible, to assume these claims.

(b) Exclusions

NOTHING IN THESE TERMS AND CONDITIONS MAY BE INTERPRETED OR CONSTRUED AS TRANSFERRING TO THE SUPPLIER ANY COPYRIGHT OR RIGHTS TO MARKS, PATTERNS, ETC., CONTAINED IN OR APPEARING ON THE PRODUCTS OWNED OR DISTRIBUTED BY PEPSICO, INC., OR ITS DIRECT OR INDIRECT SUBSIDIARIES. IF THE BUYER MAKES AVAILABLE TO THE SUPPLIER ANY MATERIALS OR DATA (INCLUDING DATABASES), IT SHALL DO SO SOLELY FOR THE PURPOSE OF ENABLING THE SUPPLIER TO FULFIL THE ORDER AND PROVIDE THE SERVICES HEREUNDER.

#### **17. LIMITATION OF THE BUYER'S LIABILITY**

THE BUYER SHALL NOT BE LIABLE TO THE SUPPLIER FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES, INCLUDING LOST PROFITS OF ANY KIND, HOWEVER THE ABOVE EXCLUSION SHALL NOT APPLY TO ANY LOSS INTENTIONALLY CAUSED BY THE BUYER. THE BUYER'S LIABILITY IN CONNECTION WITH ANY CLAIM CAUSED BY, CONNECTED WITH OR RESULTING FROM THE ORDER, OR THE AGGREGATE OF SUCH CLAIMS, SHALL NEVER EXCEED THE PRICE ATTRIBUTABLE TO THE SERVICES GIVING RISE TO THE CLAIM, UNLESS UNDER APPLICABLE POLISH LAW SUCH LIMITATION OF LIABILITY AS TO AMOUNT IS NOT PERMITTED.

#### **18. WAIVER AND REMEDIES**

The Buyer's failure to exercise any rights or claims or to exercise any rights related to the Supplier's violation hereof shall not be a waiver of the Buyer's rights, entitlements, or claims. The rights and remedies provided herein shall be cumulative and shall not preclude any rights or remedies provided by law.

#### **19. ENTIRE AGREEMENT**

These Terms and Conditions shall be an integral part of the Order and constitute the entire agreement between the Supplier and the Buyer in connection with the provision of the Services, and they shall prevail over and supersede all previous agreements and arrangements of the Supplier and the Buyer, whether oral or written, unless they are expressly accepted in writing and signed by the authorized agents of the parties. The Order may be modified by e-mail if the amount by which the Order is modified is within the limits of +/- 8.9% (value) or +/-5% (volume) or, if the amount is higher, only in writing and signed by the authorized representatives of the Supplier and the Buyer.

#### **20. GOVERNING LAW AND JURISDICTION**

The Order shall be governed by and interpreted in accordance with the laws of Poland and the parties submit to the non-exclusive jurisdiction of the Polish courts in relation to all claims and issues arising from the Order and legal relationships created by or related to it.

#### **21. INFORMATION CLAUSE**

The Buyer makes its GDPR information clause available at [www.pepsicopoland.com](http://www.pepsicopoland.com) in the Personal Data Protection tab.