TRANSGOURMET

Terms and Conditions Transgourmet Österreich GmbH

General Terms & Conditions of Transgourmet Österreich GmbH

1. Preamble

Transgourmet Österreich GmbH (shortly Transgourmet) attaches great importance to “sustainability” and “ethics” and gears its business management towards “sustainable assortment performances”, resource efficiency and climate protection as well as “the employees and the company”. Transgourmet thus expects its business partners to actively contribute to improving sustainability in the assortment performance at Transgourmet, general sustainable management and socially acceptable dealing with employees and upstream suppliers. The business partner takes appropriate measures to ensure that country-specific legal provisions as well as the relevant conventions and guidelines of the International Labour Organization are complied with. In particular, the applicable provisions and industrial standards on working time, occupational health and safety, statutory minimum wages, freedom of assembly, right to collective bargaining, prohibition of discrimination, child labour and forced labour are to be complied with. This applies to both own companies of the business partner and all permanent establishments of third parties or outsourced production parts. The business partner must be able to furnish prima facie evidence of such compliance. Transgourmet wants to achieve its entrepreneurial goals by tapping the optimum market potentials in cooperation with qualified partners.

These GTC shall apply to the cooperation as a general basis. The GTC shall give rise to neither any purchasing obligation for Transgourmet nor any delivery agreement for the partner yet. It shall complement the purchase or delivery agreement to be concluded between the parties or a written purchase order in which the essential contract components (delivery quantity, price, quality requirements etc.) shall be laid down. Detailed regulations are to be agreed separately. In case of conflicting regulations, the relevant individual provisions in the individual contracts shall take precedence over these GTC. The business partner’s General Terms & Conditions shall not become applicable, but the GTC of Transgourmet shall apply exclusively.

TOP-TEAM Zentraleinkauf GmbH (shortly TOP-TEAM) is the exclusive purchasing company of Transgourmet Österreich GmbH. All tasks in relation to purchasing, private-label management, quality assurance as well as article and supplier data provision shall be handled by TOP-TEAM for Transgourmet.

2. Supplier Portal

Transgourmet uses the data (especially article and supplier data) from the supplier portal provided and operated by TOP-TEAM at www.topteam.co.at. The range of articles and purchase price change requests are handled via this supplier portal. Furthermore, the article- and supplier-specific certificate management, care of awards (e.g. AMA Quality Seal, EU Organic Logo) and maintenance of the logistics, article and sup data are likewise ensured via this portal. This data is provided by the business partner in good time as agreed, continually verified, in particular, for its accuracy, lawfulness and integrity, and always kept current. The business partner shall be liable for any and all damage incurred by Transgourmet due to inaccurate, incomplete or untimely transmitted data. Both any and all statements of the business partner on the supplier portal and the information complementarily transmitted by the business partner shall be declared as legally binding by the business partner.

3. Obligation Under Waste Management Act and Packaging Ordinance, as Amended From Time to Time

Any and all invoiced packaging shall be dispensed in full via the business partner’s dispensation licence number or via the upstream supplier’s dispensation licence number. Furthermore, any and all delivered articles, where subject to dispensation, shall be dispensed in full via the dispensation service licence number or via the dispensation service licence number of an upstream supplier until further notice. Any and all delivered packaging from business partners invoicing in a country of the European Union outside of Austria will be fully discharged through an authorized representative appointed by the business partner at a collection and recovery system. Packaging from business partners invoicing in a country outside of the European Union will be discharged by Transgourmet Österreich GmbH at a collection and recovery system. The contracting parties commit to comply with all relevant legal provisions and requirements of the Waste Management Act (AWG) in its currently valid version, particularly AWG (§ 13g (3)), to ensure the proper disposal and recovery of packaging.

4. Merchantability and Conformity of the Goods Incl. Packaging, Declaration, User Instructions

The business partner shall guarantee that only goods merchantable under European and Austrian laws (or codes) will be delivered. Furthermore, the business partner shall guarantee that the delivered goods are in line with any and all legal provisions, in particular the Austrian Food Safety and Consumer Protection Act (LMSVG), the FIR Food Information Regulation - REGULATION (EU) No. 1169/2011 - incl. Austrian Allergen Information Regulation (AllergeninformationsVO) and, where appropriate, the Austria Chemicals Act (ChemG 1996), the Marketing Standards and the Austrian Packaging Ordinance 2014, as amended. The business partner shall guarantee that delivered organic goods are in line with the Regulation (EU) 2018/848 and relating implementing regulations on the organic production and the labelling of organic products, as amended. The balance sheet shall guarantee that only goods on which any and all claims are in line with the legal requirements will be delivered.

If Transgourmet requests product specifications from the business partner, these must be reliably transmitted to Transgourmet within 2 workdays. The product specifications must be current, unambiguously worded and in line with both the arrangements made and the valid legal provisions.

5. Food Fraud

The business partner undertakes in line with Article 7 of Regulation (EU) 1169/2011 and sect. 2 of the Austrian Federal Act Against Unfair Competition 1984 (UWG) to unexceptionally observe the correct labelling of the products and to ensure that no misleading, ambiguous or inaccurate indications are made.

6. Quality Assurance

The business partner shall provide for own purposes, own subcontractors and upstream suppliers the full, genuine and unlimited guarantee that the composition, quality, packaging, declaration and goods specification of the goods are in line with any and all pertinent quality, food and labelling standards applicable at the place of destination and for the sales markets communicated to Transgourmet, including all ancillary laws and regulations as well as all rules adopted in this context and serving, in particular, consumer protection, as amended.

7. Quality & Crisis Management

The business partner undertakes to take appropriate to ensure that the product quality requirements can be systematically implemented and its compliance demonstrably evidenced. Compliance with the legal provisions, Transgourmet stipulations and specifications has to be regulated and supervised by the business partner based on risk analyses. To that end, the business partner has to ensure an appropriate, systematic management of quality aspects and conduct relating risk assessments.

On demand, the business partner shall inform Transgourmet about the implementation standard of the quality management and crisis management system and shall provide the necessary indications in the context of a self-disclosure. The business partner shall guarantee that all certificates relevant for operation and declaration are on display in a valid version. Any and all certificates must each be uploaded to the www.topteam.co.at supplier portal and updated prior to expiry based on recognised standards by independent, accredited control bodies without request. The business partner undertakes to notify non-conformities (e.g. certificate loss, complaints by public authorities or third parties) without request.
The business partner shall grant Transgourmet the right to conduct or have third parties conduct business, product or system audits or combinations thereof on site at any time. This shall include the unrestricted access to both all quality management documents and all retention samples. This right shall be restricted accordingly regarding the keeping of legitimate production secrets. The business partner shall receive audit reports for own use. If a supplier audit is ordered due to serious quality deviations, claims or complaints, the audit costs are to be borne by the business partner.

The business partner shall take appropriate measures to ensure that the product can be traced at any time.

The bp shall guarantee that both the delivered goods and the form of supply are in line with all HACCP requirements. This shall apply, in particular, to the nature of the goods, the strict compliance with the Food REG, the cleanness and the packaging (primary, secondary and tertiary packaging). If the goods fail to meet these conditions, they may be rejected at any time by the goods acceptance or supplied sites shall have the right to return the goods at the business partner’s expense.

The business partner shall be obliged to organise such that a systematic management of crisis situations will be ensured.

8. Quality Inspections and Proofs

The business partner shall take appropriate measures to recognise and avert hazards arising from the goods during the anticipated service life of the goods.

The conformity with legal stipulations of food contact packaging and commodities is to be ensured by appropriate inspections and written proofs. Where relevant, the microbiological quality evaluation shall be governed by the legal stipulations. Moreover, outcomes of sensory inspections for food are to be taken into account.

On demand by Transgourmet, the business partner has to provide documentary proofs for the goods delivered to Transgourmet. Proofs relating to product security (e.g. declarations of conformity, inspection proofs and certificates) are to be provided in a legally valid, current form within 2 workdays from request.

9. Approach to Quality Deviations and Defaults

The business partner and Transgourmet shall maintain mutual open information in case of quality deviations, complaints and claims.

If the business partner is unable to meet agreed requirements and/or the food merchantability or legal requirements, deviations arise or potential product defects or risks become known, Transgourmet is to be informed without delay.

Transgourmet shall be entitled to have product samples be investigated by accredited institutions. If deviations from agreed requirements are found, Transgourmet shall invoice the investigation costs incurred to that end to the business partner.

A deviation shall exist if one or several deviation(s) from the agreed requirements is/are found during an inspection. If the business partner does not accept the outcome of these inspections, the business partner may arrange for a post-control in an accredited lab at own expense. If the deviation is confirmed by the post-control or no recourse can be taken to retention samples, the requirements shall be deemed to have definitely not been met. In case of deviations from the agreed requirements, appropriate corrective actions shall be agreed between Transgourmet and the business partner. The costs for their implementation and for the handling expenditure are to be borne by the business partner. The business partner shall be obliged to work on the correction of the found defects in a constructive, timely and solution-oriented manner.

Notwithstanding the other claims (i. a. claims from the legal warranty provisions) accruing to Transgourmet due to bad delivery, the business partner undertakes to bear the costs arising from the regulatory samplings and investigations as well as due to any criminal prosecution of Transgourmet or its employees in the case of a regulatory complaint and to the extent that the complaint is based on a manufacturing/declaration defect or any other fact for which the business partner is responsible.

All recalls of goods (=food safety alerts) are to be reported via the supplier portal at www.topteam.co.at on an obligatory basis. This report has to be made autonomously and immediately after its necessity has become known. The business partner shall be liable for any and all costs arising in case of a recall of goods.

10. Warranty, Notice of Defects, Damages

The business partner shall demonstrably call the attention of Transgourmet to all risks to be reasonably expected when using the product. The obligation to both the investigation and the notice of defects shall not commence until the goods have arrived at the agreed place of destination. A notice of defects shall at any rate be deemed given in due time if it has been sent off by Transgourmet in writing to the business partner's last known address one month after the date specified above. In case that any claim is asserted from the title of warranty, the business partner shall bear the burden of proof, throughout the warranty period, that the defect had not existed upon handover. To the extent that Transgourmet is entitled to damages, the claim shall also cover compensation for both lost profit and all damage for which Transgourmet has to reimburse the customer, regardless of the business partner's degree of fault.

11. Dangerous Goods

The business partner has to a) transmit Transgourmet a clearance declaration for the delivery of articles not covered by the Austrian Dangerous Goods Transportation Act (GGBG), b) transmit Transgourmet the full, Act-compliant labelling for the delivery of articles covered by the Dangerous Goods Transportation Act, c) appropriately label the packaging of articles covered by the Dangerous Goods Transportation Act (UN number), d) delete articles exceeding the "limited quantity" under the GGBG from the delivery assortment, e) upload to the supplier portal, timely provide, continually verify, in particular for accuracy, lawfulness and integrity, and always keep current as well as transmit by e-mail safety data sheets (under Regulation (EC) No. 1272/2008 and Directive (DIR) 2014/27/EU).

12. Remaining Term (RT)

The business partner shall supply Transgourmet only with optimally fresh goods, i.e. the RT being product-tailored, sector-tailored and as agreed, and Transgourmet shall have the right to return goods not meeting these requirements at the business partner's expense.

13. EAN

The EAN code has been laid down in the Logistics Manual and is available for downloading from www.topteam.co.at.

14. Article Data

The business partner shall guarantee that all article data is timely provided as agreed via GS1, the central article master (ZAS) of Markant or using an online form on the supplier portal at www.topteam.co.at, continually verified, in particular, for its accuracy, lawfulness and integrity, and always kept current. Discontinued articles are to be reported to the responsible TOP-TEAM purchaser in writing 6 weeks in advance.

15. Delivery Days, Delivery Times, Delivery Quality, Exchange Container Voucher Handling

Delivery days indicated on POs are to be bindingly observed. If additional delivery time frames were agreed, these are to be observed, with the goods receiving being guaranteed only for arrival within the agreed delivery time frames. The valid goods acceptance times shall follow from the Logistics Manual.

Any and all regulations in documents available for downloading from the www.topteam.co.at TOP-TEAM website and the B2B portal (e.g. Logistics Manual, emergency contact, delivery and invoice directory) are to be observed on an obligatory basis. The Supplier Manual shall be an integral part of the GTC. The business partner shall be liable for any and all damage arising from non-compliance with these regulations.

16. ORGANIC Certificates

Under the provisions of the basic Regulation (EU) No. 2018/848, any operator who produces, prepares, stores, imports organic products from a third country, exports organic products to a third country or who places such products on the market shall, prior to placing on the market of any products as organic, in conversion to organic or prior to the conversion period, notify his activity to the competent authorities of the Member State where the activity is carried out and submit his undertaking to the control system he is subordinated to. Under Article 35(6) of said Regulation the operator shall verify the documentary evidence (certificate) of his suppliers.

The business partner undertakes to transmit a current organic certificate in the course of marketing organic products to meet the legally imposed requirements specified above. All products or product groups offered by the business partner must be indicated on this certificate. The transmission of the respective valid organic certificate shall be a debt to be discharged at the business partner's domicile. The business partner shall be responsible for a valid organic certificate being available to TOP-TEAM at any time. The transmission shall be effected via the TOP-TEAM supplier portal. If this is not possible for any reason whatsoever, the business partner shall be obliged to contact the own responsible TOP-TEAM contact person and to clarify the issue. If the organic certificate is deprived or individual products are deprived of their organic status, this is to be communicated to TOP-TEAM in writing without delay. Infringements shall be punished with a penalty of up to € 10,000.-.

17. Deforestation Regulation

The business partner hereby commits to comply with the provisions of the EU Deforestation Regulation (Regulation (EU) 2023/1115, hereinafter referred to as EUDR) - to the extent that they are applicable to them. This includes, in particular, fulfilling all due diligence requirements, complying with national laws in the country of production, and - regardless of the direct applicability of the EUDR to the business partner - providing all necessary information and evidence to ensure that the supplied products do not contribute to deforestation or forest degradation. If the business partner violates these obligations and Transgourmet faces a sanction due to this violation, the business partner shall indemnify Transgourmet.

18. Code of Conduct for Business Partners

The business partner accepts the Transgourmet Code of Conduct in its entirety (the current version can be viewed in the download area https://www.topteam.co.at/unternehmen/downloads/#transgourmet). The business partner complies with all applicable laws and regulations, particularly in the areas of business ethics, human rights, and working conditions, as well as health, safety, and the environment, and ensures appropriate implementation within their own company and supply chains.

19. Property Rights of Third Parties

The business partner shall guarantee that neither ownership, patent nor other (property) rights of third parties of any nature whatsoever will be violated by the delivery and ordering of the delivered goods. Transgourmet shall not be obliged to verify whether intangible or other rights of third parties to the goods exist are violated, but shall be entitled to assume that the business partner is entitled to all rights required for the proper order fulfilment towards third parties. The business partner has to indemnify and hold Transgourmet harmless from relating claims of third parties in full.
Without prejudice to further rights, Transgourmet shall be entitled in such a case to refuse acceptance of the goods, to make goods already accepted available to the business partner again at the latter's expense and to withhold payment of the entire purchase price until the legitimacy of the asserted claims has been clarified.

20. Mutual Information, Avoidance of Inadmissible Influences

Transgourmet and the business partner shall be obliged to mutually inform each other without delay about all difficulties hampering the fulfilment of the contract and to look for solutions in the spirit of partnership.

Transgourmet shall customise material requirements in directives and instructions to the latest technology and market developments in each case. Transgourmet and the business partner shall maintain an open and timely exchange of information about relating innovations of general scope and undertake to take any measures to adapt the contract, where appropriate.

The business partner shall respect any provisions of Transgourmet laid down in the employment contracts under which employees and their relatives are prohibited from requesting or accepting gifts, benefits or other advantages from the business partner. Study trips and invitations to events not exclusively serving specific business purposes shall be subject to an internal duty to obtain permission and may be made only in consultation with Transgourmet. Transgourmet reserves the right to discontinue the business relationship in case of proven violations of this agreement.

All business partners of Transgourmet Österreich GmbH have access to a confidential reporting hotline. All reports can be submitted anonymously at https://www.transgourmet.at/unternehmen/beschwerde. The information provided will be treated confidentially.

21. Non-Disclosure

Transgourmet and the business partner declare that they will observe antitrust regulations and will neither pass on nor otherwise make accessible to third parties information recognisable as trade and business secrets, in particular any competitively sensitive data (e.g. current or intended prices, price discounts, e.g. rebates, price increase, price decreases, other conditions, quantities, turnovers, action planning, product relaunches, advertising statements, returns, customer lists, costs, sales figures, capacities, qualities, marketing plans, risk, investments) of the respective other contracting partner that was transmitted or made accessible in written, verbal or other form. This shall also apply to upstream suppliers, unless the obligations specified here are imposed on them in an appropriately and demonstrably effective manner. The information may exclusively be used for achieving the objectives of the annual agreement and may be exchanged and transmitted between partners only to the extent absolutely required and permitted to that end.

22. Law and Place of Jurisdiction

This agreement shall be exclusively subject to Austrian law to the exclusion of the UN Sales Law and the conflict-of-law rules of private international law. The court having local and factual jurisdiction for A-4050 Traun shall be agreed as place of exclusive jurisdiction for any and all legal disputes from or in connection with this agreement. Transgourmet shall be entitled, however, to make use of every other place of jurisdiction which may have jurisdiction under national or international law.

23. Modification to the General Terms & Conditions

Transgourmet shall have the right to modify these General Terms & Conditions.

Modifications to the General Terms & Conditions shall be offered to the business partner before the proposed effective date (offer letter). The business partner's consent to the modified General Terms & Conditions shall be deemed given if Transgourmet has received no objection from the business partner after expiry of the time limit defined in the offer letter.

In case of an objection

- to fixed-term contracts, the agreed GTC shall continue to apply;
- to open-ended contracts, Transgourmet shall have the option to terminate the contract. If Transgourmet does not make use of this termination option, the agreed GTC shall continue to apply.