

## **General Business Conditions (EKB)**

for the firm of backaldrin International The Kornspitz Company GmbH

(Tax No. 232614f)

Kornspitzstraße 1, 4481 Asten "backaldrin"

**Revision: [EKB 250817]**

### **1. General Information, Applicability, Definitions**

These General Business Conditions in the version applicable at the time of the order, shall apply to all business relationships ("applicability") involving inquiries, orders, purchases, and also to legal matters on the procurement of deliverable items and services (excepting construction contracts) between backaldrin and the supplier or service provider ("vendor"). backaldrin will publish the revised versions on our homepage [www.backaldrin.com](http://www.backaldrin.com). The backaldrin "raw materials requirements," the backaldrin "requirements for suppliers," the backaldrin "Quality Requirements List" and also the backaldrin Required Quality Documentation (declaration of conformity, HACCP, IFS, transport etc.) represent an integral constituent of these General Business Conditions. They are incorporated herein by reference.

If a supplier does not object to the revised Business Conditions within three weeks after their publication or transmittal, then their silence shall be deemed as tacit consent to the revised Business Conditions and the revised Business Conditions shall remain in force.

These General Business Conditions are binding for all current and future business relationships with the vendor, as applicable, even if no such express reference thereto is made. Any differing or supplemental business conditions of the vendor shall only be binding if they are expressly accepted by us in writing. The vendor acknowledges our General Business Conditions through their performance on the contract. Any changes or additions to the contract between backaldrin and the vendor or to these EKB must be in writing to be legally valid, and in this case shall apply only to the particular legal transaction, and not to any subsequent business. Any deviation from the requirement for written format must itself be in writing. backaldrin concludes contracts exclusively on the basis of these EKB. The terms "deliverables" and "services" as used herein shall pertain only to the backaldrin creditor as relating to the business relationship.

## **2. Contract Award**

a) Sales offers, sales documentation (plans, technical specifications etc.) and consultation with the vendor are binding and provided at no cost. Every order must be issued by us in writing and signed by an authorized agent of the company to be legally valid. The sales offer by the vendor shall be binding for a period of at least two weeks, unless otherwise specified by us. Contract awards shall be established solely in writing. Therefore statements by backaldrin must be signed by a legally authorized representative of the company. This requirement for written format shall be satisfied when signed statements by the vendor are sent or exchanged in the form of pdf-files. In this respect, the requirement for written format is satisfied when the signature of the agent is copied into the particular document, thus for a legal signature it is not necessary that the agent has signed the original document.

b) If any written document of the vendor differs from the content of our statements herein or from these EKB in any way, then the contract shall be deemed to have come into effect without these contractual changes. In the event that changes involve the price/remuneration or scope of services, then no contract shall have come into effect. Our silence in any case shall not be deemed as consent to any particular, deviating contract provisions.

c) In the event of contradictions in the contract documentation, the following ranking shall apply (where relevant):

- a contract signed (in writing) by both parties
- our purchase order/contract letter
- building and construction plans plus technical documentation
- the supplier's sales offer without included General Business Conditions

d) The vendor shall be liable to provide replacements and spare parts for delivered items for up to 10 years after delivery, at standard market pricing and delivery schedules.

## **3. Prices, Convention on Pricing Information, Payment Terms and Invoicing**

a) Prices and rebates are understood as fixed prices, excluding any sales tax or value-added tax due.

b) The agreed prices shall apply, unless otherwise specifically agreed in writing, DPP INCOTERMS 2010 Asten, and include packing plus fees and expenses, insurance, customs duties and shipping or transportation costs, offloading costs, public fees and outlays, installation and documentation costs, training costs, technical verification, and any related licensing fees. backaldrin is entitled, but not required, to return packing materials to the vendor at no cost to backaldrin.

c) Payments made within 14 days shall earn a 4% discount, payments made thereafter, but within 30 days, shall earn a 3% discount, payments made between 30 and 60 days shall earn a

2% discount, and payments made after 60 days but within 90 days shall earn no discount. The definitive timepoint for calculation of discount shall be the date of provision of service (including acceptance and documentation) and the receipt of an invoice (see item d below). If the provision of service and receipt of invoice do not occur simultaneously, then the schedule for payment shall commence with the occurrence of the later of the two events.

d) Invoices shall be sent by regular postal service, together with all documents required for identification, such as order numbers, etc. One single copy plus a copy of the shipping ticket shall be included. Payment schedules begin on the date the invoice is received and the service is provided or shipment delivered. If the provision of service and receipt of invoice do not occur simultaneously, then the schedule for payment shall commence with the occurrence of the later of the two events.

e) If a portion of the service to be provided is the delivery of documentation, obtaining an approval, installation or training of backaldrin employees, then the service is deemed to have been provided only after the acceptance is completed and the documentation, installation or training of employees is concluded.

f) If backaldrin or another company associated with the backaldrin consortium has open receivables against the vendor, then backaldrin shall be entitled, after conveyance of these receivables to backaldrin, to offset the conveyed receivables against the invoice for services provided to backaldrin. The vendor is not entitled to offset expenses.

g) Cash on delivery shipments will not be accepted. Delivery obligations cannot be satisfied by COD shipments.

#### **4. Tender Documents/Requirement for Check of Completeness**

4.1 The vendor shall examine the backaldrin tender documents thoroughly. If the vendor comes to the conclusion that the documentation is unclear, erroneous or incomplete, then the vendor must so inform backaldrin immediately, that is, within 10 business days after arrival. This information must also include reasonable, proposed solutions.

4.2 If the vendor fails to give the necessary notice, then by issue of the sales offer, the vendor acknowledges that a satisfactory delivery and/or service is possible and shall grant a warranty and right to compensation of damages for any and all defects and follow-on consequences of any unsatisfactory deliverable.

4.3 The deliverable items offered by the vendor must contain all materials, gear, ancillary work, required labor, which are necessary to provide the stipulated services, even when they are not expressly stated by backaldrin in the proposal, the technical documents, the purchase order or other documents and/or are not specifically named in the contract.

## **5. Special Provisions for Immaterial Rights to Software**

The vendor conveys all copyrights and other intellectual property rights to software and other deliverables developed specifically for backaldrin, and also to the software for all potential uses known at this time and which may become known subsequently, exclusively to backaldrin without any separate remuneration.

This conveyance applies to all usage rights without restriction in time, location or otherwise. This includes the right for processing and for transfer of these rights to third parties.

## **6. Quality/Documentation/Training**

Our vendor shall be required to use only carefully selected and well-trained employees in fulfillment of their contractual obligations to backaldrin. Our vendor shall be required to replace immediately any employees who do not possess the necessary technical skills or who adversely impact the fulfillment of the contract, and not to use such employees in fulfillment of vendor's obligations to backaldrin.

Irrespective of any quality features and technical data which may be established in the tender or in the purchase order, the quality and reliability of the deliverable shall conform to the particularly applicable legal stipulations, recognized rules of engineering and the most recent status of science and technology. The vendor shall additionally set up and maintain a quality management system (e.g. ISO 9000 ff.). backaldrin has the right to audit the vendor's quality assurance system, the QA specifications and the QA plan (and of any sub-vendors) at any time. The vendor's deliverables shall conform to the backaldrin "Raw Materials Requirements," the backaldrin "Supplier Requirements," the backaldrin "Quality Requirements" and also the backaldrin-required quality documentation (grain form declaration, HACCP, IFS, transport etc.) and to sign and provide these documents to backaldrin whenever a constituent of the delivered product changes.

All deliverables which come into contact with foodstuffs must satisfy the legally applicable EU Regulations. The vendor shall provide evidence thereof by means of EU Conformity Statements -- written in the German language (use backaldrin conformity form as a guide). Conventional deliverables with FDA-certifications are not EU-conformal, therefore are not compliant with the contract and thus will not be accepted by us. Furthermore, the associated and approved Material Safety Data Sheets must be provided for quality assurance.

The vendor shall make available to backaldrin the complete, copyable documentation for operations on ordinary, commercial data media, when (i) one such medium is required for usage of the deliverables to backaldrin, or (ii) when such data media is specified, or (iii) when such documentation is normally provided with the deliverable item. backaldrin has the right to duplicate and to use such documentation. The vendor is aware of the particular significance of observing his obligations in connection with the documentation and shall be liable for any delayed or deficient documentation. If contractual or standard commercial documentation is required with the deliverables, then the vendor shall maintain and preserve the corresponding

drawings and the test documentation/evidence for 7 years after the final shipment and provide them to backaldrin upon request.

If training or instruction in the use of a deliverable item is needed or stipulated by backaldrin, or if such training or instruction is standard practice for such deliverables, then the vendor shall be required to provide backaldrin immediately with the needed training or instruction, without any additional invoicing for remuneration being allowed.

## **7. Shipping, Transfer of Ownership**

Shipment of deliverables to the site specified by backaldrin shall be at the hazard and risk of the vendor. Ownership shall transfer upon acceptance of the delivery at the backaldrin unloading terminal, Kornspitzstraße 1, 4481 Asten via (INCOTERMS 2010- "DDP" Asten). Any expenses arising from failure to observe the shipping or transportation requirements shall be the responsibility of vendor.

## **8. Delivery Schedule and Penalties**

a) The agreed delivery and completion schedules are binding. Any delays shall be noticed in writing to backaldrin at the earliest possible moment after such delay becomes known, and a reason for the delay shall be given. This notification does not release the vendor from any of the penalties enumerated below. In such a case, backaldrin is entitled either to specify a substitute delivery schedule or to withdraw from the contract. The enforcement of any further-reaching claims from the delay shall not be thereby prohibited. The vendor shall only be entitled to provide a deliverable item before the scheduled date if backaldrin expressly gives consent in writing.

b) In case of delayed or improper performance on the contract, backaldrin shall be entitled -- irrespective of any other claims -- to withdraw from the contract or parts thereof, without setting an arrears schedule, and to demand compensation for damages due to non-performance. Furthermore, backaldrin is entitled to enter into a hedging transaction. All additional expenses and other disadvantages incurred from failure to meet a delivery schedule shall be compensated by the vendor. If portions of deliverables or delayed deliverables are accepted, then this shall not be deemed as a waiver of any contractual and legal claims.

c) In the event of delayed deliverables or deliverables not in conformance with the contract, backaldrin shall be entitled to deduct a penalty of 1% from the agreed, total contract value, excluding tax, for each calendar week of the delay or non-conformance, up to 10% of the purchase price. Any claims for compensation of damages going beyond this amount, shall remain thereby unaffected.

## **9. Acceptance and Warrantee/Guarantee**

a) The acceptance of deliverables shall take place at the fulfillment site on the agreed acceptance schedule. If part of the deliverable items relates to the provision of documentation, an acceptance, an installation or training of employees of backaldrin, then the deliverable shall be deemed as supplied (acceptance timepoint) only after the acceptance is completed and the documentation, installation or training of employees has been concluded.

b) If user instructions or other instructions are required or are standard practice for storage, processing or marketing of the deliverables, then these items shall form an integral constituent of the required deliverable of the vendor and shall be provided at the latest at the time of acceptance, or in other suitable form, such as a download-ready data file. If an official permit or the adherence to a specification is required for usage of the deliverable, then backaldrin shall be so notified in writing before award of the contract. The delivery shall be deemed as not completed before delivery of the appurtenant user instructions or other needed instructions.

c) Every delivery to backaldrin shall be accompanied by a delivery ticket; in the case of raw materials, including data on batch number and MHD, for packages, with batch number. Without the completed delivery ticket, backaldrin is entitled to refuse the acceptance. Every delivery ticket must include the backaldrin purchase order number, the purchaser and the backaldrin article number and designation.

d.) All new drawings, calculations and other, in particular technical, documents (documentation in any form whatsoever) developed by the vendor shall become the sole property of backaldrin upon acceptance, and may only be used by the vendor for delivery purposes.

e) Acceptance of deliverables shall occur after an initial inspection of the deliverable at the place of performance. An obligation to give notice of defects pursuant to §§ 377, 378 UGB is expressly waived. backaldrin is also entitled to enforce their own claims in the event of obvious defects within the meaning of § 928 ABGB. For each defective or delayed delivery, backaldrin is entitled to refuse the acceptance and is entitled to return the deliverable at the vendor's expense and/or is entitled to a refund of any resulting, additional expenses.

e) The vendor shall warrant the complete and defect-free delivery and also their adherence to all pertinent, applicable legal or official regulations, standards, guidelines and other specifications at the performance site, or at sales markets specified by backaldrin which pertain to the deliverable items. The values determined by backaldrin upon acceptance shall be definitive for weights, dimensions, quantities and quality.

f) If the deliverable upon initial inspection or upon acceptance does not meet the agreed and the usually presumed standards, then irrespective of their any other rights, backaldrin shall be entitled to demand their exchange or replacement at no charge.

g) In the event that no particular quality has been stipulated, the vendor shall be required to deliver a first-class, quality item that satisfies all relevant laws, regulations, specifications and

standards applicable at the delivery site and headquarters of backaldrin on the delivery date. Confirmation of acceptance by backaldrin does not represent an acknowledgement of quantity and quality.

The vendor shall guarantee (performance guarantee) for a period of two years of operations (even in the event of multiple-shift operations) from conveyance of ownership:

- the assured characteristics,
- proper construction, quality of design, function and performance corresponding to the most recent state of technology and to the intended purpose, and also
- use of best materials and completeness.

In addition, the vendor guarantees to backaldrin (performance guarantee within the meaning of § 880a 2nd case ABGB) that the deliverables are not encumbered by third-party rights. Nonetheless, in the event that third-party rights are enforced against backaldrin, the vendor shall be obligated to hold backaldrin harmless and not accountable, and to compensate backaldrin for any damages resulting therefrom. For deliveries from outside the EU to backaldrin, the vendor shall provide all certificates (e.g. microbiology, mykotoxins, heavy metals, GMO, EC-Conformity Declarations, etc.) from EU accredited laboratories as required for their commercialization. These documents without exception must be provided to backaldrin together with the deliverable item.

Furthermore, the vendor shall compensate backaldrin for any expense associated with any recall actions, such as personnel costs and any transportation expense. If backaldrin is sued by third parties due to defective deliverables, then the vendor shall hold backaldrin harmless and not accountable and shall refund to backaldrin any and all expenses resulting therefrom.

h) All these obligations shall apply regardless of whether the defect in the deliverable is found in a product produced by backaldrin, in a follow-on product or in an end product, and regardless of any culpability of the vendor.

j) The legally stipulated warrantee periods shall apply. If the minimum expiration date (MHD) is after the warrantee time period, then the warrantee period shall expire upon that date. The right of recourse pursuant to § 933b ABGB shall remain hereby unaffected. backaldrin may enforce a right of recourse within 6 (six) months after satisfaction of the warrantee obligation by a third party.

k) At the discretion of backaldrin (irrespective of our other rights) the vendor shall correct defects either free of charge and immediately, or shall replace the defective item. This requirement shall be satisfied by the vendor at the location where we or where our customers have placed the item in commerce. If the vendor does not immediately satisfy this obligations, then backaldrin is entitled to make improvements or find replacements at the vendor's expense. Upon replacement of the deliverable or correction of defects, the guarantee period for the replaced or improved deliverable shall begin anew.

If the delivered goods/items are already in a processing step at backaldrin or have already become finished products which were produced with the defective goods/items, then backaldrin can demand compensation in the amount of their production costs incurred for the products produced with the defective deliverables, and also any disposal costs when the products produced by backaldrin with the defective goods/items are themselves defective. If the products produced by backaldrin with the defective goods/items are not themselves defective, then as compensation backaldrin may demand the repayment of the purchase price for the delivered goods.

l) In case of defects – with the exception of quite minor defects – backaldrin is entitled to the refunding of payments made. Any reservation of ownership by third parties shall have no effect upon backaldrin.

## **10. Product Liability and Compensation of Damages**

a) The liability of the vendor is governed by the legal requirements and in particular also pertains to minor negligence. The vendor shall be liable for all incurred damages, including follow-on damages, indirect damages and damages due to loss of production. Any particular contractual restrictions to our legal claims for compensation of damages, guarantee or product liability, are not binding upon backaldrin.

b) In the case of delays or poor performance, and also product liability claims against backaldrin, the vendor shall assume all claims that third parties are enforcing against backaldrin, at the initial behest of backaldrin, and shall hold backaldrin harmless and not liable. If a product liability of backaldrin is in view, then the vendor shall notify the manufacturer or importer, if they are third parties, within 14 business days.

c) The vendor shall have unlimited liability of his own conduct, and for the conduct of all persons employed by him in fulfillment of his obligations with respect to backaldrin.

## **11. Assignment of Rights/Non-transference**

The conveyance of receivables against backaldrin is only permitted with the express, written consent of backaldrin. In any case, backaldrin is entitled to make payment to the vendor in release of indebtedness. A contract issued by backaldrin may not be transferred to sub-vendors without the prior, written agreement of backaldrin.

## **12. Installation Services**

If installation services are purchased, or are part of the business relationship, then the installation of the deliverable shall be in accordance with the legal or official requirements at the (end) destination, under adherence to the legal provisions in effect there, in particular the



safety requirements, workplace safety requirements and accident prevention requirements. The vendor shall assume responsibility for the safety of vendor's personnel and for the performance of requirements by any third parties involved.

### **13. Specifications, Formulas, Sketches and Drawings**

Any documents provided to the vendor in performance of his contractual obligations, in particular specifications, formulas, manuscripts, sketches, drawings, samples, models or other aids shall remain our intellectual property. These documents may not be provided to or made accessible to third parties without our written consent. After fulfillment of the contractual requirements, they shall be returned to us at no cost. The vendor shall be required to maintain confidentiality regarding all operating and business secrets which become known to vendor in connection with or on the basis of a business relationship or contact with us.

For any violation of the obligations of this contract item, the vendor shall be liable for a financial penalty in the amount of 10,000.00 euros paid to backaldrin. Any demands of backaldrin going beyond that stated, shall remain thereby unaffected.

### **14. Protection of Commercial Rights**

The vendor shall be liable that deliverables are free of third-party rights of any kind and that the delivery is not in violation of protected rights of third parties, in particular of immaterial property rights. In the event that a third party enforces against backaldrin an infringement of immaterial property rights in connection with deliveries by the vendor, then the vendor shall be obligated to hold backaldrin harmless and not liable.

### **15. Force majeure:**

Force majeure is understood to mean external and unforeseeable events which cannot be prevented by any reasonable means. A non-performance of obligation by pre-suppliers or transportation companies, as well as the failure of a workpiece by no means constitutes an event of force majeure.

In the event that the vendor appeals to an event of force majeure, then he shall notify backaldrin immediately and in writing of such event, and provide evidence thereof. In the case such evidence is provided, then force majeure shall release the vendor from those contractual obligations, for the duration of the event, whose performance has been rendered impossible or impractical due to the event. This temporary suspension of the contractual duty shall be indicated in the written notification, together with a verifiable justification. If an event of force majeure renders the timely performance of a contractual obligation impossible or lasts longer than four weeks, then backaldrin may cancel the contract in writing with cause. Cancellation shall be effective upon receipt.

## **16. Cancellation and Amendment of Contracts**

- a) The cancellation of a contractual relationship -- in addition to the other cases regulated in these General Business Conditions -- is allowed only with cause. Long-term indebtedness (including all kinds of successive delivery contracts) can be dissolved by backaldrin with immediate effect, when the vendor is in arrears with a deliverable, despite our setting of a reasonable (normally 14-day) grace period. Repeated, and even shorter delays or repeated poor performance by the supplier entitle us to cancel the contractual relationship immediately and without prior notice. The setting of a grace period and the onset of grounds for cancellation shall be provided in writing.
- b) Grounds for cancellation in particular, are in effect when the vendor is in violation of official regulations or provisions of this EKB.
- c) Without observing any grace period or schedules, backaldrin is entitled to cancel any as yet unfulfilled portion of a framework agreement/delivery contract when the vendor has taken no actions, such as purchasing, processing of goods, with a view toward the provision of service, and therefore a timely performance on the contract appears to be not possible. To determine whether such actions have been taken, the vendor authorizes backaldrin to inspect all information and documents necessary thereto.
- d) The vendor shall notify us immediately of any changes to names, company, address, legal organization or similar data.

## **17. Performance Site and Court of Record**

- a) Performance site for all contractual deliverables by the vendor and backaldrin is Kornspitzstrasse, 1, 4481 Asten, Austria, at the unloading terminal on the corporate grounds (see 7. of this EKB).
- b) The court of jurisdiction in Linz has jurisdiction for all legal disputes arising in connection with the handling of this business relationship and for handling of any contract between backaldrin and the vendor. backaldrin is also entitled to enforce our receivables at the general court of jurisdiction of the vendor.
- c) The vendor shall be obligated, upon demand by backaldrin, to confirm this court of record clause, at any time, in writing, and provide an appropriate corporate signature.

## **18. Applicable Law**

Austrian law shall be applied to the contractual relationship between the vendor and backaldrin. Applicability of the UN Purchasing Law is expressly excluded.

## **19. Severability Clause**

In the event that agreements between backaldrin and the vendor are invalid in whole or in part, or so become due to a change to the applicable legal requirements, then the remaining provisions of this agreement shall remain thereby unaffected. The parties to this agreement shall be required to replace the invalidated provision by a valid provision which most closely reflects the financial and intended purpose of the invalidated provision. This shall also apply to any gaps in the agreement which need to be amended.

backaldrin International The Kornspitz Company GmbH  
A-4481 Asten, Kornspitzstraße 1  
Tel. 07224/8821-0, Fax 07224/8821-217