

General Terms and Conditions of Purchase (GTCP) of Hero AG, Lenzburg Effective as of 01 October 2013

www.heroch.ch/ekb/info

(Applicable to finished products, merchandise, raw materials for further industrial processing, packaging materials, energy-related and auxiliary materials, operating materials, cleaning materials, informatics articles, office supplies and furniture, accessories, machines, equipment, and furniture, hereinafter collectively referred to as "goods"; co-packing orders and services, hereinafter referred to as "services").

1. General provisions
 - 1.1 These GTCP apply to the purchase of goods and services of Supplier by Hero AG, subject to any special provisions mentioned by Hero AG in the master agreement and/or the individual order. GTC and other terms and conditions of sale of Supplier shall only apply insofar as Hero AG expressly consents to the same in writing by separate document. The Parties expressly agree that Hero AG's signing of any delivery note or order confirmation containing GTC or other terms and conditions of sale of Supplier (whether printed separately or on the form) does not constitute acceptance of the respective conditions of Supplier.
 - 1.2 Hero AG has the right to modify these GTCP at any time. In that case, Hero AG shall inform Supplier of the new GTCP. If Supplier fails to object to the same in writing within 21 days of receipt, the new GTCP shall be deemed accepted.
 - 1.3 The commercial clauses utilised in the master agreement and/or in the order shall be interpreted as defined by the International Chamber of Commerce (ICC) per Incoterms 2000 with addenda, which shall form an integral part of the agreement unless expressly agreed otherwise.
 - 1.4 Supplier shall not cite Hero AG as a reference without Hero AG's prior written consent.
 - 1.5 Supplier shall not assign the order (in whole or in part) to any third party without Hero AG's prior written consent.
2. Performance
 - 2.1 Benefit and risk shall pass upon receipt of delivery at the place of performance. Until that time, transport of the goods is at Supplier's risk and expense. The decision whether or not to accept the goods shall be made by Hero AG's Quality Control.
 - 2.2 The place of performance for the delivery of goods is the destination (delivery address) specified by Hero AG.
 - 2.3 Hero AG is not liable to Supplier if Hero AG is unable to fulfil its contractual duties because of any instance of force majeure, including but not limited to strike, fire, flood, war, absence of workers, terrorist attacks, nuclear disasters, volcano eruptions, transport problems, power failures, interruptions of operations, disruptions affecting subcontractors, official actions, or the like. Hero AG shall inform Supplier of any impediments resulting from force majeure. If any such impediment lasts for more than 30 days, then Hero AG has the right to withdraw from the agreement (including the master agreement). In that case, Hero AG shall have no duty to compensate Supplier for any losses resulting from this withdrawal.
 - 2.4 Every shipment must be accompanied by a delivery note containing the information requested by Hero AG. Delivery notes and pallets must contain the following information: name of Supplier, delivery date, delivery note number, date of order, order number, delivery address, Hero item no., name of item, quantity unit, sales quantity unit, shelf-life, and lot number. If the requested accompanying documents are lacking, the goods shall be kept in storage at Supplier's risk and expense until such time as these documents are received. Hero AG has the right to refuse acceptance of deliveries that lack the requested accompanying documents (in particular, the original copy of the delivery note). Hero AG also reserves the right to demand production records and other documentation from Supplier.
 - 2.5 No partial or advance deliveries shall be made without the prior written consent of Hero AG.
3. Deadlines
 - 3.1 Delivery is due at the place of performance on the agreed delivery date. Any and all delivery dates set by Hero AG and not immediately objected to by Supplier are binding.
 - 3.2 Upon expiry of the delivery date, Supplier is automatically in default with its delivery. In particular, Hero AG is not required to give any prior reminder nor grant a grace period to Supplier for this purpose. In case of default, Supplier is liable for damages to Hero AG.
 - 3.3 If Hero AG receives an unannounced delivery of goods prematurely, then Hero AG may either reject the goods or place them in storage at Supplier's expense.
 - 3.4 In case of default by Supplier, Hero AG has the right to cancel the purchase via written notice but without granting Supplier any grace period and to reject the delivery. Hero AG also has the right to withdraw from the agreement and reject the delivery, if, even prior to the due date of the delivery, it has been conclusively established that Supplier will be unable to meet the delivery date. Hero AG furthermore has the right to withdraw from the agreement if the circumstances clearly indicate that the delivery will be unfit for the intended use. Hero AG reserves its claims for damages in this respect.
4. Warranty
 - 4.1 Supplier represents that, in terms of their internal quality and outward presentation, the goods comply with the relevant statutory provisions in Switzerland and the EU, particularly with Swiss foodstuffs legislation, as well as with Hero AG's quality requirements and the applicable specifications. Supplier is liable to Hero AG both for the warranted qualities of the goods and for ensuring that the goods do not have any physical or legal defects that would eliminate or materially diminish their value or their fitness for the intended use. Unless otherwise prohibited by law, this liability applies even if Supplier is not at fault for defects or warranted qualities of the goods.
 - 4.2 For successive or repeated deliveries, Supplier must notify Hero AG's Purchasing Department of any and all changes to product specifications or production methods immediately, at its own initiative, and in writing.
 - 4.3 For all technical goods, such as systems, machines, apparatuses, tools, implements, vehicles, means of transport, lifting and handling equipment, etc., Supplier also represents that these goods comply with the generally accepted, most up-to-date codes of practice, as well as with the legal provisions applicable in Switzerland and in the EU and those of other relevant organisations (SUVA (Swiss Accident Insurance Fund), professional associations, etc.).
 - 4.6 Hero AG has the right to give notice of defective goods of Supplier at any time within a period of 24 months of the date of delivery, and thus before or after processing and/or resale and regardless of the date of inspection. Hero AG is not required to inspect Supplier's goods for defects via spot checks at the time of receipt. The limitations period for claims under the warranty for defects is two years from the date on which Hero AG discovers the respective defect in the delivered goods.
 - 4.7 If the delivered goods lack the warranted qualities or are otherwise defective, then Hero AG has the right to demand that Supplier replace or correct the goods free of charge, reimburse Hero AG for the reduction in the value of the goods (mitigation), or reverse the purchase transaction (repudiation). In addition to these warranty claims, Hero AG may demand that Supplier compensate Hero AG for any and all direct losses (e.g., litigation costs, expenses, and return and/or recall expenses) and/or other losses (e.g., lost profits, liability claims, and third-party claims for damages) incurred by Hero AG in connection with the defective delivery of the goods. If Supplier effects re-deliveries/correction of the goods, then the limitations period begins to run again upon receipt of the re-delivered/corrected goods.
 - 4.8 No foreign matter may enter the content through the packaging process. Supplier represents that the goods comply with the intended use of Hero AG.
 - 4.9 The goods shall be delivered to Hero AG on exchangeable pallets that are new or as good as new. The reusability criteria of EPAL (www.epal-online.ch) shall apply. Supplier states that it is expressly in agreement with the foregoing.
5. Product liability – return, recall

Supplier warrants that it works with an internal emergency-management system that ensures that products can be returned or recalled in a systematic, efficient and documented manner. If a product defect causes deliveries or sales to cease or the goods to be returned or recalled, then Supplier is required to provide Hero AG with all relevant information and assistance, no matter whether this action is ordered by the authorities or taken voluntarily by Supplier. Supplier agrees to hold Hero AG harmless against all losses caused by the products manufactured by Supplier. Supplier is required to take out liability insurance with adequate risk coverage. Upon request, Supplier shall provide Hero AG with proof of this insurance in the form of a copy.
6. Quality
 - 6.1 Supplier shall take appropriate quality assurance measures to ensure that the product and the ingredients used in manufacturing the same, as well as the packaging, comply with all legal provisions currently in force within the EU and Switzerland and with all special requirements per the product specifications. This also applies to services. Supplier has a GFSI-certified quality-management system in place.
 - Quality parameters
 - 6.2 Supplier warrants its compliance with the terms and conditions agreed upon in the specifications, including but not limited to the sensory, chemical, physical, and microbiological parameters, as well as compliance with the hygiene provisions currently in force within the EU and Switzerland.
 - Traceability
 - 6.3 Supplier is required to ensure traceability under Swiss law and Regulation (EC) no. 178/2002 Art. 18, and Regulation (EC) no. 931/2011. Accordingly, products must be labelled with a batch mark.
 - Residues
 - 6.4 Supplier warrants its compliance with the legal provisions currently in force in the EU and Switzerland concerning residues and contaminants (e.g., pesticides, mycotoxins, pharmaceuticals, heavy metals, and allergens) and with the requirements set forth in Hero AG's specifications.
 - Right of audit
 - 6.5 Hero AG reserves the right to check the items specified in this quality section as part of an audit at Supplier's business establishment (after giving Supplier due advance notice). This includes an inspection of Supplier's operations, inspecting its quality-management documents and supporting documentation, as well as accessing existing reference samples.

- Genetic engineering	6.6	Hero AG refrains from engaging in genetic engineering wherever this is possible and technologically compatible. Therefore, Supplier, in turn, shall support Hero AG in this respect and warrants that the delivered products, raw materials, ingredients, additives, processing agents, and carriers neither constitute nor contain any genetically modified organisms (GMOs), are not produced from GMOs or manufactured from/with GMOs, and that no GMO technology is used in any part of the production chain. Where it can be shown that commingling occurred accidentally or could not be technologically avoided, Swiss legislation (SR817.022.51) and EU legislation (Regulations (EC) 1829/2003 and 1830/2003) apply. Supplier must be able to show at any time that proper measures (separation, traceability, etc.) were taken to avoid the presence of such GMO material.
- Nanotechnology	6.7	Hero AG shall refrain from utilising nanotechnology as long as no specific legal provisions are in place. Therefore, Supplier in turn shall support Hero AG in this respect and warrants that the delivered products, raw materials, ingredients, additives, processing agents, and carriers are manufactured without the use of nanotechnology and that no nanotechnology is utilised in any part of the production chain.
- Socially acceptable working conditions	6.8	Supplier agrees to comply with the working conditions in effect in its enterprise and shall take steps to ensure that its upstream suppliers and subcontractors comply with the same. Specifically, Supplier agrees to comply with the UN Convention on the Rights of the Child and the conventions of the International Labour Organisation (in particular, regarding child labour, forced labour, and workplace discrimination) at all levels of Supplier's business activity.
- Ethics/sustainability	6.9	For purposes of improving in responsible and ethical business practices in global supply chains, Hero AG cooperates with SEDEX. SEDEX is a secure, non-profit-oriented platform for exchanging information on environmental, health, safety, labour-standards and business-ethics practices. Supplier agrees to join SEDEX (http://www.sedexglobal.com/) at no charge to Hero AG.
- Liquidated damages	6.10	If Supplier fails to deliver the goods in accordance with the agreement (e.g., incorrect product labelling, deviations from goods-receipt standards, early or late delivery, etc., and, as a rule, where notice of defects is given), then Hero AG has the right to claim a lump sum in the amount of CHF 300.00 from Supplier for every individual delivery not in compliance with the agreement. However, payment of these liquidated damages does not release Supplier from its duty to perform the agreement. Hero AG reserves the right to assert claims for damages that exceed the amount of the liquidated damages and other rights of Hero AG under these GTCP.
7. Price		The price covers all services necessary for the proper performance of the agreement. This includes, in particular, all services in accordance with the agreed terms of delivery, packaging, and labelling, as well as expenses, licence fees, and all public charges. Prices are exclusive of statutory value-added taxes (VAT).
8. Billing		The invoice must be sent separately by mail to Hero AG, Accounts Payable Department, P.O. Box, CH-5600 Lenzburg, indicating the order number and material number, product description, and the exact gross, tare, and net weights and/or number of units for every individual item, as well as the type of packaging. Partial deliveries made in accordance with par. 2.5 must be expressly labelled as such; the delivery note and invoice for the final delivery must be expressly marked "Balance Shipment". If multiple orders or parts thereof are delivered in connection with a delivery, Supplier must indicate all relevant order numbers without abbreviating the same and must separate each of them by means of a comma. International suppliers may also send their invoices via e-mail to finance@hero.ch .
9. Payment		Payment shall be made in accordance with the special terms indicated in Hero AG's order. Unless otherwise agreed in writing, payment shall be made within 30 days of receipt of a correctly submitted invoice, subject to any existing claims for warranty against defects and/or warranties of title, but no earlier than 30 days after acceptance of the non-defective goods. Payments of partial deliveries made in accordance with par. 2.5 shall only be made if the Parties have agreed on this in writing. Supplier does not have the right to offset claims.
10. Packaging and transport	10.1	Supplier shall cover the cost of packaging and is responsible for proper packaging and for transport terms adapted to the product relating to the respective delivery (in particular, the temperature during transport or the like). For temperature-controlled transports, Supplier must provide Hero AG with a record of the temperature progression when handing over the goods.
	10.2	If the packaging material is reclaimed, Supplier must indicate this expressly on its documents. Supplier shall collect the corresponding packaging material (at its own expense) from Hero AG or have it delivered by Hero AG at Supplier's own expense.
	10.3	Hero AG reserves the right to return packaging material.
11. Intellectual property	11.1	Supplier acknowledges that the rights to all packaging designed at the instruction of Hero AG (including print data) and to the trademarks to be affixed to the same are held in full and exclusively by Hero AG.
	11.2	Supplier shall not make publications mentioning Hero AG or its trademarks and products without the prior written consent of Hero AG.
	11.3	Supplier warrants and represents that the delivered goods do not infringe on any proprietary rights of third parties (e.g., trademarks, patents, and copyrights), and Supplier shall hold Hero AG harmless in the event of infringement. In that case, Supplier agrees, at Hero AG's request, to become party to any legal proceeding against Hero AG or to conduct the proceeding in Hero AG's stead at its own cost and/or to cover the costs and compensation resulting from the proceeding.
12. Rescission		If the order is rescinded for good cause, specifically because of changes to foodstuffs legislation or because of import restrictions or the like, then Hero AG shall have no duty of compensation.
13. Miscellaneous	13.1	All documents provided to Supplier (including packaging) remain the property of Hero AG and, barring a written agreement to the contrary, must be returned to it intact no later than when the goods are handed over. These documents shall not be disclosed to third parties, entrusted to third parties for inspection, copied or destroyed, or used for third parties or for Supplier's internal purposes without Hero AG's express written permission.
	13.2	Supplier shall maintain the confidentiality of all information and documents concerning Hero AG which Supplier receives in the course of conducting business activities with Hero AG. Supplier shall ensure that its employees and any agents and assistants engaged by it will also comply with this obligation. This obligation shall continue for an indefinite period.
	13.3	Supplier is liable for all inspection and procedural costs, official fines, inconveniences, losses, and lost profits attributable to defects in the goods or for quality deviations for which Supplier is at fault.
	13.4	Any and all changes and additions to the respective order must be made only in writing and signed by both of the Parties. This also applies to any waiver of this requirement.
	13.5	If any individual provisions of the GTCP or of the special terms of the order are invalid, the remaining provisions shall remain in full force and effect. Invalid provisions shall be replaced with provisions that shall maintain the economic intent and purpose of the ineffective and/or invalid provision. The foregoing shall also apply to any omissions.
14. Applicable law Goods (Vienna and jurisdiction)	14.1	These GTCP and individual orders are subject to Swiss substantive law exclusively . The UN Convention of 11 April 1980 on Contracts for the International Sale of Convention) shall not apply.
	14.2	The exclusive jurisdiction for all disputes arising from the contractual relationship between the Parties is Hero AG's registered office in Lenzburg, Switzerland .

(Details regarding par. 4.9.)

CRITERIA FOR THE EXCHANGE OF EPAL/EURO PALLETS

To exchange EPAL certified EUR-pallets 800 x 1200 mm, the following exchange criteria must be observed:



NON-EXCHANGEABLE EURO PALLETS – SWISS FEDERAL RAILWAYS - INSTRUCTIONS

If Euro Pallets display one or more of the following types of defects, they are not exchangeable and must be repaired in accordance with the provisions of UIC Instructions 435-4. Hero AG shall pass the associated costs (re-palletisation, new pallet, storage/removal, etc.) on, and Supplier acknowledges its agreement with this arrangement.

A single upper or lower edge board is damaged so that one nail or screw shank is revealed.



The EUR mark on the right or i.e. the EPAL symbol on the left is missing.



A board is missing.



A block is missing or split to the point where more than one nail shank is visible.



A board is broken transversely or diagonally.



More than two lower or upper edge boards are damaged and reveal one nail or screw shank for each board.



Other characteristics (Poor condition overall):

- The loading capacity can no longer be guaranteed (wood worm-eaten or rotten).
- Contamination is such that products may be soiled.
- Large splinters are coming away from a number of blocks.
- There is evidence that inadmissible construction elements have been used, e.g. boards and blocks that are too weak.