

## **1. APPLICATION**

These Terms and Conditions of Sale (the "**Conditions**") govern the contractual relationship between SAS BOULANGERIE NEUHAUSER, located at 18 avenue Foch, 57730 FOLSCHVILLER – 638 502 963 – SARREGUEMINES (the "**Seller**") and its customers (the "**Customer(s)**"), for all sales of products (referred to below as the "**Products**").

BOULANGERIE NEUHAUSER is a controlled company of the INVIVO GROUP<sup>1</sup>, as per the provisions of article L.233-3 of the French commercial code.

Pursuant to Article L.441-1 of the French Commercial Code, the Conditions constitute the sole basis of the business relationship.

In accordance with the provisions of Article L.441-4 IV of the French Commercial Code, the Parties shall fix a projected turnover mentioned in the business plan negotiated by the Seller and the Customer.

In accordance with Article L. 442-1 of the French Commercial Code, the Customer shall not require the Seller to grant conditions that create a significant imbalance in the rights and obligations of the parties under their sales agreement, or to align this agreement with commercial terms that the Customer deems more favourable and that may have been granted to other customers.

The negotiated sales terms cannot take effect before the price list is implemented, or before the effective date of the agreed-upon price based on such list.

These Conditions supersede all previous general or specific terms and conditions applicable to Products sold by the Seller.

These Conditions may be supplemented by Specific Terms and Conditions of Sale ("Specific Terms") granted by the Seller under its sales policy in exchange for the Customer's performance of duties or services requested by the Seller and relating to sale and purchase transactions, or by financial benefits in exchange for quantitative commitments on the part of the Customer.

If no annual framework agreement has been signed, all orders placed by the Customer with the Seller necessarily entail, as an essential and determinative condition, the Customer's acceptance of the current price list and of these Conditions. Unless it has expressed reservations in writing before placing an order, the Customer is deemed to have accepted all of the stipulations of the Conditions once such Conditions have been sent.

The fact that the Seller fails to invoke any one of these Conditions at a given time shall not be interpreted as a waiver of the right to later invoke any of such Conditions.

These Conditions shall automatically renew each year unless the Customer notifies the Seller of its intent to renegotiate two months prior to the renewal date.

## **2. ORDERS**

### ***2.1 Conditions***

Except for orders taken by telephone, all orders must be in a writing (e-mail, fax, telemessaging, etc.) that expressly identifies the Customer. Orders placed by the Customer in this manner are firm and final only upon their express acceptance by the Seller, which will verify that the Products are available. Orders must specifically state the Customer's name and contact information, date, purchase order number, Product description, agreed unit price, packaging, and quantity, as well as the delivery dates, times, and locations desired by the Customer, in accordance with Seller's limitations.

Orders taken through telephone sales are deemed firm and final once the Customer's verbal order has been entered and approved by the Seller. No claim shall be permitted if the Customer's fails to confirm its verbal order in writing.

The Seller reserves the right to reject or reduce any order that is atypical for any reason whatsoever.

Accordingly, if an order is unusually large as compared with available inventory or routine procurements, the Seller reserves the right to refuse to deliver a portion of the order or to modify its

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<sup>1</sup> "INVIVO GROUP" means the group constituted by the company INVIVO GROUP and its respective controlled companies, pursuant to the provisions of Article L. 233-3 of the French Commercial Code. For the purposes of the foregoing, "controlled" means, with respect to an entity, any other entity that, directly or indirectly, through one or more entities, Controls, is Controlled by, or is under the same Control as, such entity, "Control" and "Controlling" being understood by reference to the definition of Control as per the meaning of Article L. 233-3 of the French Commercial Code

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execution. In such case, the Customer is not entitled to charge any penalty.

Furthermore, if the price list is modified, the monthly procurement preceding implementation of the modification shall not exceed one month's average sales.

The order is personal to the Customer and cannot be assigned without the Seller's written consent.

Note that information included in catalogues, leaflets, notices, schedules, price lists and, more generally, any presentation and promotional documents for the Seller's Products or information provided by the Seller in any form whatsoever is provided for information only, is non-contractual and is not binding on the Seller.

In the event of an abnormally high order in relation to the supplies usually requested, the Seller reserves the right to refuse all or part of the order. Any order that is 20% higher than the average for the last 12 months of the same period the previous year will be considered an abnormally high order.

Due to production constraints and/or supply of raw materials and/or pressure on the availability of raw materials used in the composition of the products, whatever the cause, the Seller reserves the right to define the allocation of available quantities by product and delivery point in order to ensure equal access of its customers to its products.

As part of these difficulties, the Seller will not be able to accept logistical penalties.

#### ***2.2 Order modification***

Any increase or any partial or total cancellation of the order by the Customer after issuance shall be taken into account only if accepted in writing by the Seller.

The Seller reserves the right to require the Customer to compensate it for any damages it may incur as a result of such modification, and any deposits or prepayments paid by the Customer shall be retained by the Seller.

In any case, the Customer may not modify or cancel any order that concerns Product orders in preparation, or which are in the process of shipment.

### **3. DELIVERY**

#### ***3.1 Delivery terms***

Given the wide range of situations encountered, the Seller will inform the Customer of the delivery procedures and transport methods to be used upon acceptance of the order.

Regardless of the delivery method used and the selected delivery location, the Customer shall bear all risks to the Products which may arise once they are delivered by the Seller.

Delivery is the moment at which the Products covered by the order are:

☐ handed over to the Customer by the Seller and after the Delivery Slip is signed, or

☐ handed over to the Customer by the transporter appointed by the Seller after the CMR consignment note is signed, or

☐ collected by the Customer or the transporter appointed by the Customer, after signature of the CMR consignment note at the time of loading.

#### ***3.2 Transport cost***

Unless otherwise provided in the specific terms and conditions entered into with the Customer, transport costs are paid by the Customer in accordance with the Incoterm agreed in the price list.

#### ***3.3 Delivery times***

Delivery times are provided by the Seller for information only and depend on supply, transport and scheduling constraints. Any reasonable delay as compared with estimated delivery times shall not result in any payment withholdings or compensation, shall not justify cancellation of the order, and shall not result in termination of any contract or commitment made by the Customer. In accordance with customary tolerance within the trade, and if the delivery is by appointment, it will be considered on-time within a period of plus or minus one (1) hour.

#### ***3.4 Loading times***

If loading times are scheduled, the Parties acknowledge and agree that a period of two hours for loading and one hour to prepare customs documentation is considered reasonable and shall not result in any

penalty on the part of the Customer.

#### **4. ACCEPTANCE - RESERVATIONS**

Without prejudice to the arrangements and reservations made with the transporter pursuant to Articles L.133-3 et seq. of the French Commercial Code, the Customer shall also:

- Take delivery of the Products covered by the order (loading and/or unloading) at the agreed place, date and time and check that they conform to the order;

- Provide notice upon taking delivery of any Product anomalies, setting forth written reservations on the delivery slip or the CMR consignment note and providing any necessary documentation to prove the existence of such anomalies, breaches, or apparent defects.

The Customer shall verify the condition, quantity and quality of the Products and, more generally, the delivered Products' conformity to the applicable order.

- Provide confirmation of the anomalies reported to the Seller by sending a registered letter with acknowledgement of receipt within 3 business days following receipt of the Products. The Customer must provide all supporting documentation showing the existence of the anomalies, breaches and apparent defects.

Following the Customer's acceptance of delivery, no product can be returned or exchanged for any reason whatsoever.

The Customer shall not impose any rejection or return of goods upon the Seller without giving the Seller the opportunity to verify and acknowledge the corresponding claim.

Accordingly, all product returns are subject to the Seller's express prior consent.

Any return accepted by the Seller will result in a credit note being issued to the Customer or in replacement of the Products, in the Seller's discretion, following qualitative and quantitative verification of the returned Products, to the exclusion of any damages.

Any Product returned without consent will be held for the Customer and shall not lead to issuance of a credit note.

#### **5. PRODUCT USE**

As a professional, the Customer is solely responsible for the selection and use of the Products it purchases from the Seller.

Accordingly, the Customer declares that it is fully informed of the features of and changes to the Products purchased from the Seller, acknowledges that it has received all necessary clarifications concerning packaging, storage conditions and use, and has proceeded with their purchase and use in full knowledge thereof.

#### **6. PRICES**

Prices are fixed for a six-month period maximum.

Prices are invoiced based on the price list in effect on the delivery date.

These prices exclude taxes and other charges and expenses of any kind. The Customer is responsible for payment of such fees, duties and taxes.

The Customer is responsible for any taxes on amounts owed by it.

Price lists are firm for their period of validity. The Customer's sales policy and its decision to make promotional offers shall have no effect on the price charged by the Seller, on the schedule of payments or on amounts owed to the Seller by the Customer. During the course of the year, the Seller may send the Customer a new price list that shall apply from the date set forth in such notice. It shall not apply to pending orders.

However, if the cost of raw materials changes or other elements impact the calculation of cost price, the Seller reserves the right to amend the price list at any time during the year, giving two (2) months' notice prior to implementation of the new price list.

Generally speaking, the Customer acknowledges that it has a duty of fairness and cooperation under Articles 1134 et seq. of the Civil Code, prohibiting it from outright rejection of the adjusted price list submitted by the Seller, which may result in liability. Unless expressly waived by the parties, price list

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adjustments shall not impact the application of the other provisions of the sales agreement entered into by the Customer and the Seller.

As per the provisions of Article L. 443-4 of the French Commercial Code, the Seller uses the following main indicators for the following ranges or products:

- Bakery and pastries: indicator Matif for soft wheat published by Terre.net corresponds to flour, main material making up the product bred
- Range or product pastries: indicator Butter European published by Bachart Trading Guide.

#### **7. PAYMENT**

Sales are payable as per the provisions of the price list.

Invoices are payable at the Seller's address set forth in Article 1 above.

A documented dispute concerning invoicing or delivery does not give the Customer a right to suspend payment of the invoice. Payments shall be made when due by accepted bills of exchange or other payment method determined by the Seller. The Customer shall take all necessary steps so that the payment is effective on its due date.

The invoice is deemed paid when the stated amount has been definitively credited to the Seller's bank account.

By express agreement of the Parties, the above-mentioned payment deadline shall not be extended for any reason whatsoever. In no case shall claims made by the Customer delay the payment due date for the order to which such claims relate.

No discount shall be given for early payment.

In addition, amounts remaining unpaid on the due date shall bear late payment interest calculated based on the interest rate applied by the European Central Bank to its most recent refinancing transaction plus ten percentage points, in accordance with the procedure defined in Article L.441-10 of the French Commercial Code.

The late payment interest procedure discussed in the previous paragraph shall not impede - after notice given by the Seller that remains without effect for a thirty day period – the Customer's payment of compensation under the penalty clause equal to 15% of the amount remaining unpaid when due.

Pursuant to Article D.441-5 of the French Commercial Code, the Seller may also apply a charge for collection costs of 40 euros per invoice.

The Customer shall also pay all costs incurred by the Seller in connection with proceedings to recover the amounts due.

Furthermore, the failure to pay one invoice will automatically render all of the Seller's other outstanding invoices immediately due - all amounts in question shall be subject to the same provisions set forth above.

The Seller reserves the right to refuse to deliver or honour an order from a Customer who has failed to pay some or all of a previous order, or with whom a payment dispute is ongoing.

The Customer is authorised to set off payment of the Seller's invoices only against certain, fixed and payable claims, these three conditions being cumulative.

In no case shall the Seller agree to have payment of invoices set off against penalties or indemnification of any kind. Any set-offs made in violation of the rules set forth above shall entitle the Seller to refuse to execute pending orders, or to terminate any agreement with the Customer, without prior notice or indemnification.

Furthermore, and without prejudice to application of the penalties discussed above and any legal action, the Seller may suspend its obligations with regard to the order impacted by the late payment, along with any pending orders, until the Customer pays all outstanding sums in full.

Rebates are definitively owed only if the Customer pays the applicable invoices in full.

In the event of non-payment, the Seller reserves the right to terminate the sale without warning, by registered letter with acknowledgement of receipt.

#### **8. TERMS OF DELISTING**

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In accordance with Article L.442-1 of the French Commercial Code, if a product is delisted, the Customer agrees to inform the Seller thereof by giving reasonable notice in light of the length of the business relationship with the Seller, but which shall in no case be less than 3 months. This notice period shall be extended to six (6) months for products specific to the Customer. During the entire notice period, the Customer agrees to maintain its established average order volume, taking into account the volume typically ordered by the Customer over the previous year.

#### **9. PREScription**

If the Customer does not dispute, by sending a registered letter with acknowledgement of receipt, the invoices received and payments made within one (1) year from the date of such invoices, they shall be deemed definitively accepted. Any subsequent dispute shall be deemed inadmissible.

#### **10. SERVICES**

The Seller may purchase services from the Customer that promote resale of Products to consumers, subject to being formalised in a contract signed by both parties in accordance with Article L.441-3 of the French Commercial Code.

Invoices for such services must be prepared after they are performed, in compliance with Article L.441-9 of the French Commercial Code. They are subject to standard VAT rates in force.

They cannot be set off against the Seller's Product supply invoices, and therefore cannot be deducted from payment of such invoices.

#### **11. CONSUMER PROMOTIONS**

Occasional discounts may be approved as part of promotional activities. In the case of Products purchased as part of a "consumer promotion", the Customer agrees to pass on (or cause to be passed on) all benefits of such promotion to the consumer. Accordingly, the Customer shall ensure all rules concerning such promotion are applied to its customers.

As part of a promotional offer specifically developed by the Customer to correspond to one of the brand's key periods (anniversary, leaflet, themed week, etc.) and concerning a specific product (more or free, lot, related bonus, instant rebate coupon, price reduction through discount, etc.); quantities to be delivered by the warehouse must be disclosed to the Seller through the warehouse no later than five weeks before the delivery date. If this deadline is not met, the Seller may not be held liable for damages or delays. No invoiced penalties will be accepted in this regard.

#### **12. FORCE MAJEURE**

The Seller's obligations shall be automatically suspended with no formalities, and it shall not be held liable, in the event of force majeure. The concept of force majeure covers any event rendering it impossible to perform the obligation without a profound impact on the contract's economic balance. Examples of force majeure include but are not limited to: fires, floods, earthquakes, extraordinary weather conditions or any other natural events; war, attacks, riots or insurrections; general strikes in the transport or fuel sectors; any strike impacting the Seller, its subcontractors or service providers; action by a government or government agency, embargoes or other governmental or legal proceedings not initiated by or specifically directed toward the Seller.

#### **13. HARDSHIP**

The Seller is relieved from liability and other consequences of a failure to perform any obligation either:

- the continued performance of its duties has become excessively onerous due to an event beyond its reasonable control which it could not reasonably have been expected to have taken into account at the beginning of the performance of the order and/or any other contractual document, and that it could not reasonably have avoided or overcome the event or its consequences; or
- there occurs any change in the applicable law, and/or any increase in taxes, established practice of any governmental authority generally as to materially affect the fundamental economic and financial basis of the price list, or the order, as well as any other contractual document;



Then, the provisions of the price list, or the order, as well as any other contractual document, shall be reviewed or renegotiated by the Seller and the Client in good faith with a view to making such adjustments and modifications as may be reasonable having regard to the risks incurred by the affected the Seller.

Where this paragraph applies, but where alternative commercial and/or contractual terms which reasonably allow for the consequences of the event are not agreed by the Client, the Seller is entitled to freely terminate the commercial relationship with ethe client by giving two (2) months prior written notice, without penalties or indemnities of any nature whatsoever.

#### **14. RETENTION OF TITLE**

**Products whose sale is governed by these Conditions are sold with a clause which expressly makes transfer of ownership conditional on full payment of the price, both the principal amount and incidental charges.**

**It is agreed that the mere delivery of a document creating an obligation to pay, bill of exchange or otherwise, does not constitute a payment under this provision. The Seller's original debt remains in force with all related guarantees, including retention of title, until such bill has been paid in accordance with these Conditions.**

**Upon handover of the Products (as defined in these Conditions), the above provisions shall not impede the transfer to the Customer of the risk of loss or deterioration of the Products that are subject to retention of title, along with any damages that may occur.**

**The Customer shall take out an insurance policy covering all risks which may arise as from delivery of the Product for a value at least equal to their price and ancillary costs.**

**With regard to Products for which payment has not been made, the Customer shall ensure at all times that they are identified as the Seller's property, and cannot be confused with other property or be the subject of any claim by third parties. Products in inventory are assumed to be those for which payment has not been made.**

**The Customer is further prohibited from pledging as collateral or assigning, in any form whatsoever, ownership of the Products as a guarantee.**

**In the event the Customer fails to perform its obligations, the Products may be recovered by the Seller - at the Customer's expense - at any time and without warning, and without prejudice to payment to the Seller of any damages in this regard. Accordingly, the Seller and its transporter are authorized to enter the Customer's premises to remove Products covered by the retention of title provision. This process does not exclude other actions or legal proceedings that the Seller may decide to undertake.**

#### **15. INTELLECTUAL PROPERTY**

The Customer acknowledges that it has no right of any kind to the trademarks, models, names, or distinctive signs under which the Seller's Products are marketed, and which shall remain the Seller's exclusive property.

As a general matter, the Customer agrees not to alter the Seller's intellectual property rights and will not engage in improper use thereof which could discredit or devalue the Products.

As a matter of principle, the Customer undertakes to:

- not to alter BOULANGERIE NEUHAUSER's intellectual property rights and not to make improper use of them which would discredit or devalue the Products. The Customer undertakes in particular to avoid, in the context of comparative advertising featuring the Customer and one of his competitors, any comparison which has the effect of degrading the qualitative image built by BOULANGERIE NEUHAUSER around its brands and Products,
- to systematically use the graphic charter relating to the Products available on request,
- not to create any risk of confusion, in the minds of third parties, in any way whatsoever, between its products and the Products,
- not to reproduce or have reproduced, in whole or in part, all the intellectual property rights of which

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BOULANGERIE NEUHAUSER is the owner, under penalty of prosecution and/or to transmit to third parties any information of any nature whatsoever, allowing the total or partial reproduction of these rights; The Customer who would have knowledge of a risk of infringement of intellectual property rights held by BOULANGERIE NEUHAUSER undertakes to inform the latter immediately by fax or by e-mail confirmed by registered letter with acknowledgement of receipt.

#### **16. CONFIDENTIALITY**

The Customer undertakes to maintain strict confidentiality over all of the administrative, commercial, financial or technical information of any nature whatsoever of which it may become aware under the terms of the order(s) and/or a potential contract. The Customer undertakes not to disclose such information to any third party, for any reason whatsoever, unless prior written consent is provided by BOULANGERIE NEUHAUSER, subject to termination of the commercial relationship with the Customer and without prejudice to any legal action which may be undertaken as a result.

#### **17. PERSONAL DATA PROTECTION**

The Parties undertake to comply, where applicable, with all applicable laws and regulations relating to the protection of personal data, including in particular the Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016. The Parties will not transfer any personal data to a country outside the European Economic Area without the prior written consent of the other Party and, where such a transfer is agreed, the Parties will sign the appropriate EU standard contractual clauses. The Parties shall promptly comply with any request from the other Party to modify, transfer or delete all or part of the personal data provided by that Party under these GTCP. The Data Protection Officer (DPO) can be contacted by e-mail at : rgpd@invivo-group.com.

#### **18. CONFORMITY - COMPLIANCE**

The Customer undertakes to comply with and apply the compliance rules and principles described the Reference Framework Program implemented by the InVivo Group and acknowledges that it shall be held liable to BOULANGERIE NEUHAUSER, its shareholders, its directors and its subsidiaries for all damages arising from a breach of the commitments set out in the Reference Framework Program. The Reference Framework Program of the InVivo Group is available on simple demand of the Customer.

#### **19. SEVERABILITY:**

If any provision of these Conditions is declared null and void or deemed not to have been written, all other provisions shall remain in force between the Parties.

#### **20. JURISDICTION AND APPLICABLE LAW**

The Seller and the Customer expressly agree that:

- the Commercial Court with jurisdiction over the Seller's head office shall have sole jurisdiction in the case of any challenge, dispute or difficulty interpreting these Conditions, and more generally, concerning the existing relationship between the Parties;
  - only French law shall apply;
  - in the event of a dispute related to interpretation between the French version of these Conditions and other translation that may have been provided to or created by the Customer, the French version shall prevail.
-