

EXHIBIT 1 OF DISTRIBUTION AGREEMENT



Delivery and Payment Conditions of Cavendish & Harvey Confectionery GmbH (hereinafter "Vendor")

1. General – Applicability

- (1) The following Delivery and Payment Conditions (hereinafter referred to as **Delivery Conditions**) shall apply to all contracts concluded between the customer and the Vendor. This also applies with respect to future transactions from current business relations with the customer, even if the Vendor does not expressly refer to these Delivery Conditions.
- (2) The Vendor does not acknowledge provisions that conflict with or deviate from these Delivery Conditions, unless the Vendor has expressly agreed to their effectiveness in text form. These Delivery Conditions shall also apply when the Vendor, knowing of conflicting customer provisions or of customer provisions deviating from his conditions, makes delivery without reservation to the customer.
- (3) The Delivery Conditions shall apply only to entrepreneurs within the meaning of § 14 para.1 German Civil Code, to public law legal persons and to public law special funds within the meaning of § 310 para.1 German Civil Code.
- (4) In case of commercial import of our products from other countries into the Federal Republic of Germany (reimports) the legal provisions applicable to the sale of the products (including the obligations pursuant to Sections 3 No. 14, 7 et seq. of the German Packaging Act) must be complied with by the importer.

2. Conclusion of Contract

- (1) A contract shall not be concluded until the Vendor confirms an order in text form or performs on the basis of the order.

- (2) Offers made by the Vendor remain provisional insofar as the order confirmation does not contain anything to the contrary or the Vendor has not otherwise explicitly agreed in text form.
- (3) Orders made by the customer constitute an offer to enter into a delivery contract and may be accepted by the Vendor within an acceptance period of 2 weeks insofar as the order does not contain a shorter acceptance period.

3. Prices – Payment Conditions

- (1) All prices apply ex works, without packaging for transportation and transportation costs, insofar as the order confirmation does not provide otherwise.
- (2) All prices are calculated in EURO. Discounts are allowed only if they are previously and expressly agreed on in text form. The prices do not include statutory VAT. In case that VAT is incurred, it shall be owed by the customer according to the statutory amount.
- (3) To the extent not otherwise agreed upon in text form, all invoices shall be paid after the performance of the Vendor's contractual obligations within 10 days of invoice receipt in Euro or in any other agreed upon currency.
- (4) All payments shall principally be made by way of a bank transfer to one of the business accounts of the Vendor. Payment by cheque or another payment surrogate is only accepted in lieu of performance of contract and if agreed upon it in text form.
- (5) If the customer's payment is delayed, the Vendor is entitled to charge the statutory interest (nine percent points above the basic interest rate per year, § 288 German Civil Code) on late payments. This shall not affect the assertion of any further damage by the Vendor.
- (6) If the Vendor is obligated to provide advance performance and, after conclusion of the contract, circumstances become known to him from which his payment claim is endangered by the customer's inability to pay, the Vendor may demand either a security within a reasonable timeframe or payment reciprocally and simultaneously with delivery of the goods. If the customer does not comply with this demand, the Vendor becomes entitled to withdraw from the con-

tract without affecting any of his other legal rights.

4. Delivery Time

- (1) Delivery dates or deadlines are non-binding to the extent not otherwise expressly agreed upon or guaranteed by the Vendor.
- (2) There is no delay in the meaning of this agreement if the delivery retarding is caused by events for which the Vendor is not responsible or by force majeure. The agreed upon delivery deadline shall be extended by the length of the impediment. If the impediment lasts longer than three months, the Vendor shall (without affecting any of his other legal rights) be entitled, after he has specified without result an additional period for performance, to withdraw as to the non-fulfilled portions of the contract.
- (3) In the event the customer defaults on acceptance or breaches another of its duties to cooperate, the Vendor shall be entitled to demand the damages incurred, including any additional expenses. In this case, the risk of loss or deterioration of the goods also transfers to the customer the moment the customer defaulted on acceptance.
- (4) The Vendor is entitled to make partial deliveries to the extent it is reasonable for the customer.

5. Place of Performance/Transfer of Risk

- (1) Place of performance for all contractual obligations shall be the registered seat of the Vendor unless otherwise agreed upon in text form.
- (2) The delivery of the good shall occur upon readiness of the goods for collection ex warehouse. At the request of the customer, the Vendor shall ship the goods to another place than the place of performance (Purchase to Destination). Unless otherwise agreed, the customer shall bear transportation costs.

The risk of accidental destruction and accidental deterioration of the goods pass to the customer at the latest upon handing over the goods to the customer or his representative. In case of a Purchase to Destination, the risk of accidental destruction and accidental deterioration of the goods as well as the risk of delay pass to the customer upon handing over the goods to the forwarder, carrier or other person or body specified to carry out the shipment. If the Purchase to Destination is conducted to a state outside of the Federal Republic of Germany, the Incoterms 2010 "FCA" shall apply.

- (3) The goods will to be delivered uninsured. The customer shall generally be responsible for insuring the goods, the Vendor only, if agreed hereon in text form.

6. Warranty against Defects

- (1) The customer's warranty rights (claims for defects) require that the goods be inspected promptly upon receipt and that a written notice regarding visible defects be made immediately after the inspection and promptly after discovery in the case of hidden defects (§ 377 German Commercial Code).
- (2) If the customer wrongly claims a defect (other than by reasons for which the Vendor is responsible) the Vendor is entitled to charge the customer for the reasonable costs incurred in remedying the defect or establishing it.
- (3) In case of a defect of the good, the Vendor shall – to the extent that he has not assumed a guaranty stating otherwise – be given a reasonable deadline within which to perform cure at his discretion by way of remedying the defect of delivering a good free of defects. If, after at least two performance attempts, the performance fails, is impossible, is unreasonable for the customer, or if the Vendor refuses performance, the customer may withdraw from the contract or reduce the payment. As to the assertion of claims for damage compensation by the customer, number 7 of these Delivery Conditions shall apply.
- (4) Except for claims of damage compensation under number 7 of these Delivery Conditions, all warranty claims by the customer become time-barred 12 months after transfer of the risk, except when the customer asserts a claim under a right of

recourse (§ 479 para.1 German Civil Code) or when we have maliciously concealed the defect.

7. Claims for Damage Compensation and Liability Based on other Grounds

- (1) The Vendor is liable only for damages based on an intentional or grossly negligent breach of duty or malice by the Vendor, his legal representatives or persons whom he uses to perform his obligations. Insofar as the Vendor is liable for a grossly negligent breach of duty pursuant to sentence 1, compensation for damages is limited to the foreseeable, typically arising damages.
- (2) Further, the Vendor is also liable for damages that are caused by simple negligence if the negligence concerns the breach of such contractual obligations, whose fulfillment is of particular importance to achieving the purpose of the contract and in which the customer may therefore regularly trust (cardinal obligation). In this case, liability is limited to the foreseeable, typically arising damage.
- (3) In addition, the Vendor has unlimited liability for damage to life, limb, and health for which he is responsible, which are caused by negligent or intentional breach of duty. The Vendor is also liable to the extent he has assumed a guaranty as to quality or durability, within the scope of such guaranty.
- (4) Further contractual or statutory liability is – to the extent legally permitted – excluded without regard to the legal status of the claim asserted.
- (5) Where the Vendor's liability is excluded or limited, this also applies to any personal liability of his employees, representatives and persons whom he uses to perform his obligations as well as the Vendor's responsibility for their behavior.

8. Reservation of Title

- (1) The Vendor reserves title to the delivered goods (reserved goods) until receipt of all current or future payments due arising from the business relationship with the customer, including balance claims in the current account. In the event of a payment delay by the customer, the Vendor is – after specifying a reasonable deadline for performance – entitled to take back the delivered goods and to otherwise utilize them. The customer shall bear the transportation costs incurred

for the retaking of the goods by the Vendor. The retaking of the goods constitutes a withdrawal from the contract. A withdrawal also occurs in the event that the Vendor seizes the reserved goods. The Vendor may utilize reserved goods which he has taken back. The proceeds from such use shall be set off against the customer's liabilities – less reasonable use costs. Withdrawal from the contract shall not exclude any other claims including claims for damage compensation against the customer.

- (2) The customer is under an obligation to treat the delivered goods with care. The customer has the particular duty of insuring them for replacement value at its own cost against damages from fire, water and theft.
- (3) The customer is entitled to use and resell the delivered goods in the ordinary course of business, as long as there has been no delay in payment. However, the customer is not entitled to pledge the reserved goods or to transfer title in order to use it as a security. For the purpose of security, the customer hereby entirely transfers to the Vendor all claims accruing from the resale of the reserved goods as well as all other claims it becomes entitled to against its buyers or third parties with respect of the reserved goods irrelevant of their legal basis (especially but not exclusive claims resulting from unlawful acts or claims to an insurance benefit) including all balance claims in the current account. The Vendor hereby accepts the transfer.

The Customer remains authorized to collect the debt after the transfer for his account and in his name for the Vendor as long as the Vendor does not revoke the authorization. The right of the Vendor to collect the debt himself remains unaffected; however, the Vendor will not assert the claims and revoke the authorization as long as the customer duly fulfills his contractual payment obligations towards the Vendor.

However, in the event of a breach of contract by the customer – especially but not exclusive in case of a delayed payment – the Vendor may demand that the customer provides information on the transferred claims and the debtors, provides all information and documents necessary for collection, and notifies the debtors of the transfer.

- (4) The processing or reconstruction of the reserved goods by the customer is always carried out on behalf of the Vendor. If the reserved goods are processed with other goods not belonging to the Vendor, the Vendor acquires co-ownership in the new goods in relation to the value of the reserved goods to the other processed goods at the time of the processing (final invoice amount including value-added tax). As to the goods arising from the processing, the same applies as for the goods delivered under reservation.

If the reserved goods become inseparably combined or intermixed with other goods not belonging to the Vendor, the Vendor acquires co-ownership in the new goods in relation to the value of the reserved goods to the other combined or intermixed goods at the time of the combination or intermixture (final invoice amount including value-added tax). In the event that the combination or intermixture is conducted in a way that the goods of the customer are to be seen as the main goods, the customer and the Vendor hereby agree to transfer proportionate co-ownership in the good to the Vendor. The Vendor hereby accepts the transfer.

The sole/co-ownership of the goods created in this way shall be placed in custody by the customer on behalf of the Vendor.

Apart from that, as to the sole/co-ownership of the goods created under this section, the same applies as for the goods delivered under reservation, including without limitation all stipulations in para. (3) above.

- (5) In the event of seizure or other third party interventions, the customer must without undue delay inform the Vendor in writing thereof in order to enable the Vendor to pursue his rights in ownership. Insofar as the intervening third party does not compensate the Vendor for the judicial or extra-judicial costs incurred in connection with the intervention, the customer shall be liable.
- (6) The Vendor agrees to release the security made available to the Vendor upon request of the customer to the extent the value of the security exceeds the secured debts by more than 10%; the choice of which security to release remains with the Vendor.

- (7) If the delivered goods are transported to a foreign country, the following applies: If the delivered goods are delivered prior to the payment of all amounts by the customer due under the contract, it remains the property of the Vendor until total payment has been made, to the extent permitted under the law of the place where the delivered goods are located. If the law of the place where the delivered goods does not permit such a reservation of title but instead allows the Vendor to reserve other rights in the delivered goods, the Vendor shall be entitled to exercise all such rights of this type. The customer is under a duty to cooperate in the measures the Vendor undertakes to protect the Vendor's property rights or the other rights the Vendor has in their place regarding the delivered goods.

9. Applicable Law – Venue

- (1) The legal relationship between the parties is exclusively governed by German law with the exclusion of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG).
- (2) Venue shall lie at the seat of the Vendor. However, the Vendor shall be entitled to sue the customer in the court where it is domiciled.

10. Miscellaneous Provisions

- (1) The Customer shall have no right of set-off, retention or to withhold performance, except to the extent that the counterclaim has not been disputed by the Vendor or has been determined by a final and binding decision. The execution of a retention right also requires that the counterclaim of the customer originates from the same contractual relation. The restrictions to the Customer's right of set-off, retention or to withhold performance according to this Sec. 10 (1) shall not apply to the Customer's warranty rights (claims for defects) originating from the same contractual relation.
- (2) The Vendor shall retain all copyrights and proprietary rights to diagrams, catalogues, calculations, and other documents; they shall not be provided to third parties without an explicit approval by the Vendor in text form.

- (3) In case an individual provision of the delivery contract or of the Delivery Conditions should be or become invalid, Any invalid provision shall be replaced by such valid provision as most closely reflects the commercial intent and purpose of the original provision. The same shall apply in case of any gap.