

General Terms and Conditions of Sale

Defacto offers a financing service for companies, through the provision of equity loans (hereinafter the "**Financing**"). This service is also offered through technological partnerships that allow Defacto's platform to be interfaced with **Partners'** software environment.

The Partner wishes to offer **You** (hereinafter referred to as the "**Borrower**") the Defacto solution in order to benefit from financing offers to finance your commercial activity on the Partner's platform. In order to adapt to the Borrower's changing needs, the Financing will be made available in one or more tranches, each corresponding to an equity loan independent of those granted under the other tranches and subject to the common provisions of these GTCs (hereinafter, the "**Tranches**" or, individually, a "**Tranche**").

These general terms and conditions of sale (hereinafter the "**GTC**") define the rights of the Parties and their respective obligations under the Financing. Each Portion will then be the subject of a separate agreement (each referred to hereinafter as the "**Loan Agreement**").

NOW, THEREFORE, IT HAS BEEN AGREED AS FOLLOWS:

1. INTRODUCTORY ARTICLE - DEFINITIONS

Common names and phrases used in the GTCs beginning with a capital letter shall, for the purposes of these terms and conditions, have the meanings given to them in the following definitions:

Borrower: means the person who is the borrower in the Loan Agreement and requests the Financing.

Early Repayment Event: means any of the events listed in Article 5.2 (Early Repayment) below.

Financing: means the financing transaction embodied in the Financing Agreements, pursuant to which the Lender makes available to the Borrower sums of money in separate installments in order to provide financing.

Financing Agreements: means the contractual package formed by the GTC and each Loan Agreement.

GTC: means these general terms and conditions of sale. The signed GTC are available at all times on the Borrower's personal space at the following address: <https://api.getdefacto.com/t&cs/foodcircle>.

Lender: refers to "Defacto", a Simplified joint stock company "*Société par Actions Simplifiée*" with a capital of 4190.47 Euros, whose registered office is located at 50 rue Marguerite de Rochechouart 75009 Paris, registered in the Paris Trade and Companies Register under number 899 270 979, represented by its Chairman, Mr. Jordane Giuly.

Loan Agreement: means each participatory loan (equity loan) agreement entered into between the Lender and the Borrower, entered into under these GTCs and subject to its terms. Signed Loan Agreements are available at all times on the Borrower's personal space at the following address: <https://api.getdefacto.com/loans>.

Outstanding Financing: means, at any time, the aggregate principal amount of the sums made available to the Borrower under each Loan Agreement corresponding to a Tranche and not yet repaid.

Partner: means Foodcircle GmbH, whose registered office is at Almstadtstraße 9, 10119 Berlin, Germany registered with the Amtsgericht Berlin(Charlottenburg) Commercial Register under number,

Defacto

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HRB 203611, Represented by its Managing Director Dario Maritano,

Party: means individually or collectively, the Lender, the Borrower and/or the Partner.

Tranche: means each tranche of financing made available to the Borrower under a Loan Agreement in the form of an equity loan independent of those made under other Loan Agreements.

Article 1 TYPE OF FUNDING

The Financing is made up of all the Loan Agreements, each corresponding to a Tranche. Each Loan Agreement is an equity loan subject to the provisions of Articles L. 313-13 et seq. of the French Monetary and Financial Code.

The Financing Agreements do not constitute consumer credit within the meaning of Articles L. 312-1 et seq. of the Consumer Code.

Each Loan Agreement is also governed by the general provisions of Articles 1905 to 1914 of the Civil Code and Articles L. 313-1 et seq. of the Monetary and Financial Code.

The Borrower acknowledges that because the Tranche is an equity loan, he will ensure that the Tranche is recorded in its balance sheet in accordance with the legal and regulatory provisions applicable to equity loans.

Article 2 TRANCHE

The funds made available to the Borrower under the Financing are made available in accordance with the terms of each Loan Agreement.

Subject to its terms, each Loan Agreement shall be subject to the terms of the GTC. To the extent consistent with the terms of each Loan Agreement, the provisions of these GTCs shall apply to each such Loan Agreement and shall be deemed to be part, *mutatis mutandis*, of each Loan Agreement.

Article 3 SUBORDINATION OF LOAN AGREEMENT

Each Loan Agreement is an equity loan subject to Articles L. 313-13 to L. 313-17 of the French Monetary and Financial Code. In the event of the Borrower's voluntary liquidation, judicial liquidation, safeguarding or judicial recovery by assignment, and in accordance with Article L. 313-15 of the French Monetary and Financial Code, the outstanding amount of each Loan Agreement and, consequently, the Outstanding Financing, as well as the amount of interest or remuneration not yet paid, will be repaid only after all other preferential or unsecured creditors have been paid in full.

For allocations to be made, the Lender will be placed on the same rank as all other equity loan holders.

In the event of safeguard or judicial recovery by continuation of the Borrower, and in accordance with Article L. 313-16 of the French Monetary and Financial Code, the repayment of the Outstanding Financing and the payment of the remunerations provided for will be suspended for the duration of the execution of the safeguard or judicial recovery plan.

Article 4 REPRESENTATIONS AND WARRANTIES OF THE BORROWER

4.1. Borrower's Representations and Warranties

The Borrower represents and warrants to the Lender that, upon acceptance of the GTCs, until all amounts owed by the Borrower under the Loan Agreements have been paid in full and repaid, and upon each Loan Agreement :

- a) that it is a company regularly constituted and validly existing under French law;

Defacto

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- b) that it has the capacity and authority to enter into the Financing Agreements and to perform its resulting obligations;
- c) that the execution of the Financing Agreements and the performance of its obligations thereunder have been duly authorized by its competent bodies and that all formalities or registrations necessary for the execution of the Financing Agreements have been completed;
- d) that the signatories of the Financing Agreements are duly authorized to sign such agreements in the name and on behalf of the Borrower and to bind the Borrower validly to the obligations resulting therefrom;
- e) that the Financing Agreements create legal obligations binding on it and enforceable against it in accordance with their terms;
- f) the execution of the Financing Agreements and the performance of its obligations thereunder do not contravene any law or regulation applicable to it, any provision of its bylaws or any contract or commitment to which it is a party or by which it is bound; and
- g) that it is not in a state of cessation of payments, nor is it the subject of an ad hoc mandate, a conciliation, an amicable settlement, a safeguard procedure or judicial liquidation procedure, nor is it the subject of a dissolution, liquidation or reorganization procedure.

All of the foregoing representations shall remain in full force and effect and shall be reiterated each time Borrower makes any payment to Lender pursuant to the Financing Agreements, and shall continue in full force and effect until all amounts owed by Borrower under the Financing Agreements have been fully paid and satisfied.

4.2. Commitments of the Borrower

The Borrower agrees, as of the execution of the GTC, until all amounts owed by the Borrower under the Financing Agreements have been paid in full and repaid and upon each Loan Agreement, to:

- a) pay or reimburse amounts due under the Financing Agreements on the dates on which they are due;
- b) to perform all other obligations and commitments arising for it from the Financing Agreements;
- c) provide the Lender as soon as possible with its certified and approved annual financial statements, any other interim accounting documents that it prepares, all information that it communicates to credit institutions in connection with the loans that it has taken out or will take out, and more generally all documents or information concerning its financial situation and business that the Lender may reasonably request;
- d) inform the Lender, without delay:
 - i. the occurrence of any event constituting or likely to constitute an Early Repayment Event;
 - ii. the occurrence of any event that would prevent the Borrower from reiterating at any time during the term of the Financing Agreements, the representations and warranties set forth in Article 4.1 (Borrower's representations and warranties) above.

Article 5 DURATION AND EARLY REPAYMENT

5.1. Duration of the GTC

The GTC come into force on the date of its signature by both parties.

They shall remain in force and continue to have effect until the total amount of the Outstanding Financing has been repaid in full by the Borrower.

The GTC shall terminate when the Borrower has not entered into a Loan Agreement for a period equal to or greater than twelve (12) months, provided that the Borrower has fully repaid the Lender, including payment by the Borrower of all interest, fees and expenses due to the Lender under the Financing

Agreements.

5.2. Early repayment

The occurrence of any of the following events shall constitute an early repayment event of the Outstanding Financing and of any amount made available to the Borrower under the Financing Agreements:

- a) any amount of principal, interest, fees or incidentals due under the Financing Agreements, is not paid by the Borrower on its due date, and such failure to pay is not cured within fifteen (15) Business Days after such due date
- b) any of the representations and warranties made by Borrower under the GTC cease to be accurate or are misleading or are likely to become inaccurate;
- c) any information or material (including but not limited to invoices) provided by the Borrower under the Financing Agreements proves to be false, inaccurate or misleading;
- d) the Borrower fails to perform or comply with any commitment made by it under the Financing Agreements (other than the commitment to pay referred to in paragraph (a) above), which is not remedied within thirty (30) calendar days of written notice to it by the Lender;
- e) the Borrower is or is likely to be in a state of suspension of payments, to be the subject of an ad hoc mandate, a conciliation, an amicable settlement, a safeguard procedure or judicial liquidation procedure, or to be the subject of a dissolution, liquidation or reorganization procedure, or of a total or partial transfer of the business.

The Borrower shall promptly notify the Lender of the occurrence of any event constituting or likely to constitute an Early Repayment Event.

Unless the Borrower remedies the Event of Default within the time limit set forth above, the Lender may, by notice sent to the Borrower by registered letter with acknowledgement of receipt, and without prior notice, terminate the Financing Agreements by operation of law and declare the Outstanding Financing due immediately.

In the event that the Outstanding Financing is declared immediately due and payable, the Borrower shall be obliged to make early repayment, in full and immediately, of the Outstanding Financing, plus the amount of accrued interest and other expenses, commissions and incidentals due to the Lender until the date of actual repayment of the Outstanding Financing by the Borrower.

5.3. Termination of the GTC

Unless a Loan Agreement has been entered into pursuant to the GTCs or a Loan Agreement has not expired, the Parties may, after written notice sent to the other Party and subject to a notice period of three (3) months, terminate the GTC.

Upon termination of the GTC, the Parties understand that no new Loan Agreement may be entered into.

Article 6 MANDATE TO ACCEPT THE LOAN AGREEMENT

The Borrower authorizes the Partner, who accepts it, to sign, in the name and on behalf of the Borrower, all the Loan Agreements that will be entered into pursuant to the GTC.

The Borrower may, at any time, revoke the mandate given to the Partner without calling into question the Loan Agreements already signed. The Borrower undertakes to inform the Lender immediately and without delay.

The Parties agree that, in accordance with this Section and notwithstanding Article 10 of the Loan Agreements, the Partner may execute the Loan Agreements by API call to the following address <https://api.getdefacto.com/loans>.

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This mandate is granted for the duration stipulated in the GTC and takes effect on the day the Parties sign the GTC.

Article 7 MANDATE FOR PAYMENTS

For purposes of all payments due under the Financing Agreements, The Borrower gives the Lender an irrevocable mandate to this effect and undertakes to constitute sufficient funds in the said account so that withdrawals may be made in accordance with the terms of the Financing Agreements.

Article 8 NOTIFICATION

Unless otherwise stipulated and subsequently notified to each of the Parties in the following terms, any notification to be made by one Party to another Party shall be made in accordance with the conditions set forth in the Loan Agreement.

Article 9 CONFIDENTIALITY

The Parties agree to keep confidential all information provided during the execution of the Financing Agreements until such information becomes public knowledge.

The Parties also agree to keep all information in the Financing Agreements strictly confidential.

Article 10 PROTECTION OF PERSONAL DATA

In accordance with the provisions of Regulation (EU) 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the "**RGPD**") and the legislative provisions applicable in France (in particular the "Informatique et Libertés" law of January 6, 1978, as amended), personal data concerning the Borrower as well as those of its employees, directors, agents, auditors, legal and/or tax advisors and more generally of any other person whatever their capacity acting on behalf of the Borrower (the "**Data Subjects**") contained in any document transmitted to the Lender may be collected, recorded, organized, structured, stored, adapted or modified, extracted, consulted, used, communicated by transmission, disseminated or made available, reconciled or interconnected, limited, erased or destroyed ("**processed**") by the Lender as data controller (the "**Data Processor**") as well as by any person acting on behalf of the Lender, including, without limitation, any third party to whom the Lender may decide to entrust the management and collection of the Outstanding Financing.

This information includes: name, date of birth, place of birth, address (including postal and/or e-mail address), nationality, telephone number, passport or national identity card number, citizenship, as well as any personal data the processing of which is necessary to comply with legal and regulatory requirements in terms of, among other things, "*know your customer*" and the fight against money laundering and the financing of terrorism (the "**Personal Data**")

The Personal Data transmitted by the Data Subjects are processed for the sole purpose of enabling the Data Controller, as well as any person acting on its behalf, including, without limitation, any third party to whom the Lender decides to entrust the management and collection of the Outstanding Financing, to enter into a contract with the Data Subjects in compliance with the laws and regulations in force and the contractual provisions of the Financing Agreements.

Personal Data will not be retained longer than necessary for the purposes of data processing and in any event for a maximum of five (5) years from the date on which the Borrower has paid the Lender the full amount due under the Financing Agreements.

Concerned Persons may:

- request access to their Personal Data;
- ask for the rectification of their Personal Data when they are false or incomplete;

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- to object to the processing of their Personal Data;
- request the deletion of their Personal Data;
- request a limitation on the use of their Personal Data; and
- request the portability of their Personal Data.

The Data Subjects may exercise all the rights listed above by contacting the Data Controller at the following address

Email: support@getdefacto.com

Address: Defacto, 50 rue Marguerite de Rochechouart, 75009 Paris

Data Subjects are also informed of their right to file a complaint with the “Commission Nationale de l'Informatique et des Libertés (CNIL)” at the following address: 3, place de Fontenoy, 75007 Paris, France; or with any competent authority for the protection of personal data in the Data Subject's country of residence.

Article 11 TRANSMISSION OF FINANCING CONTRACTS

Rights and/or obligations under the Financing Agreements:

- may not be assigned or transferred by the Borrower without the prior written consent of the Lender;
- may be freely assigned or transferred by the Lender, without the prior written consent of the Borrower, without in any way modifying the terms and conditions agreed between the Parties in the Financing Agreements.

Article 12 FORCE MAJEURE

Neither the Borrower nor the Lender shall be liable for the non-performance of their contractual obligations under the Financing Agreements to the extent that such non-performance is the result of force majeure as defined by the Civil Code and the case law of the French “Cour de Cassation” and courts. In addition, force majeure shall only release the Party invoking it from its contractual obligations to the extent and for the time that it is prevented from performing them.

Article 13 AMENDMENT - EXERCISE OF RIGHTS - PARTIAL INVALIDITY - COMPLETENESS - UNFORESEEN CIRCUMSTANCES

The GTC can only be modified by express written agreement of the Parties. Any modification shall be formalized in a written amendment, duly signed by the Parties. This amendment will then be considered as forming an integral part of the Financing Agreements.

The failure of a Party to exercise or partially exercise any right or remedy under the Financing Agreements shall not constitute a waiver by such Party of any right or remedy in the future. The failure of a Party to exercise or partially exercise any right or remedy shall not constitute a waiver by such Party of the right or remedy to exercise such right or remedy again or to exercise any other right or remedy.

If any provision of the Financing Agreements is found to be invalid or inapplicable, in whole or in part, the remaining provisions of the Financing Agreements shall continue to apply. In addition, the Parties agree, in good faith negotiations, to replace the unenforceable or invalid provisions with other provisions of comparable effect. The failure of either Party to replace invalid or unenforceable provisions shall not affect the validity of the remaining provisions or the valid portion of a partially invalid provision which shall be effective to the extent permitted by law.

The Financing Agreements alone express the entire agreement between the Parties with respect to their subject matter and supersede and cancel any prior agreements, correspondence or documents

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that they (or any of them) may have entered into or communicated to each other with the same or similar subject matter as this Agreement.

The Parties represent and acknowledge that the provisions of Article 1195 of the Civil Code shall not apply to their respective obligations under the Financing Agreements, and that they shall have no claim of any kind under Article 1195 of the Civil Code.

Article 14 EVIDENCE

In accordance with the provisions of Article 1366 of the Civil Code, with regard to Financing Contracts, the Parties acknowledge that a written document in electronic form has the same evidential value as a written document in paper form.

Article 15 ELECTRONIC SIGNATURE OF FINANCING CONTRACTS

The Parties have agreed to sign the Financing Agreements electronically in accordance with the provisions of Articles 1366 and 1367 of the Civil Code, by means of an API call at the following address <https://api.getdefacto.com/loans>.

Borrower represents and warrants to Lender that:

- The electronic signature by him of the Financing Agreements binds him validly in the same terms as if he had signed them on paper;
- The electronic signature of the Borrower on the Financing Agreements reliably identifies the Borrower as the Borrower and guarantees the Borrower's relationship to the Financing Agreements.

The Parties therefore declare that the electronic version of the Financing Agreements constitutes the original document and is perfectly valid between them.

The Parties declare that electronically signed Financing Agreements constitute literal evidence within the meaning of Article 1367 of the Civil Code and have the same evidential value as a written document on paper in accordance with Article 1366 of the Civil Code and may be validly opposed.

The Parties therefore undertake not to contest the admissibility, enforceability or evidential value of Financing Agreements signed in electronic form.

Article 16 APPLICABLE LAW AND JURISDICTION

The Financing Agreements shall be governed by and construed in accordance with French law.

Any dispute concerning the interpretation, validity, execution of the present contract and/or the operations, which will follow and/or result from it will, in the first place, be solved by amicable means and in the absence of an amicable solution within two months following the occurrence of the disagreement, submitted to the Commercial Court of Paris.

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