

## **General Purchasing Terms and Conditions of FRUTAROM Savory Solutions GmbH**

### **1. Scope**

1. These General Purchasing Terms and Conditions shall apply to any and all business relations between FRUTAROM Savory Solutions GmbH (hereinafter referred to as “**FRUTAROM**”) and the Supplier, even if not expressly mentioned in subsequent agreements. They shall apply accordingly to work performances and services. The taking of the delivered products shall be replaced in case of work performance by acceptance of work and in case of services by receipt of the service.
2. Any terms and conditions of the Supplier conflicting with, in addition to, or deviating from these General Purchasing Terms and Conditions shall not form subject matter of the contract unless FRUTAROM expressly had consented to their applicability in writing. These General Purchasing Terms and Conditions shall also apply in case FRUTAROM unconditionally takes delivery from the Supplier, having knowledge of its conflicting, additional or deviating terms and conditions.
3. Any agreements entered into between FRUTAROM and the Supplier for the execution of the contract in addition to or deviating from these General Purchasing Terms and Conditions shall be made in writing. This shall apply accordingly for the waiver of this written form requirement.
4. Rights that FRUTAROM is entitled to, beyond these General Purchasing Terms and Conditions, pursuant to legal provisions or other agreements remain unaffected.

### **2. Conclusion and Amendments of Contract**

1. An order becomes binding only if placed by FRUTAROM in writing or, in case of orders placed verbally or in particular by telephone, if duly confirmed by the Supplier in writing. An order placed by use of automatic appliances and lacking signature and name is considered a written order. Silence of FRUTAROM as to offers, requests, or other declarations of the Supplier is deemed consent only if agreed in writing. To the extent the order contains obvious errors, misspellings, or miscalculations, FRUTAROM shall not be bound to it.
2. Offers and samples of the Supplier are free of charge for FRUTAROM. They shall, upon FRUTAROM's request, be taken back by the Supplier immediately and at its own expense.

3. Immediately, and at the latest one week, after receipt of an order the Supplier shall issue a written order confirmation expressly and bindingly stating the price and delivery date. Deviations of the order confirmation from the order are deemed agreed only if expressly confirmed by FRUTAROM in writing. This shall apply accordingly for subsequent contract amendments.
4. Order confirmations, advices of dispatch, waybills, bills of delivery, invoices, and other written communication of the Supplier shall contain the order data, in particular order number, order date and Supplier's number.
5. In case that, during the execution of a contract, deviations from the specification originally agreed turn out to be necessary or expedient, the Supplier shall inform FRUTAROM immediately and shall submit modification proposals. FRUTAROM will notify the Supplier if and how the latter must modify the original order. FRUTAROM shall be entitled to modify the order at any time, in particular with respect to the composition of the products. In such cases, the Supplier is granted a reasonable time period to modify the production as may be necessary. Should such modifications lead to differing costs incurred by the Supplier due to the execution of the contract, the Parties shall negotiate an appropriate adjustment of the agreed prices. Should no agreement regarding an adjustment of the agreed prices be reached within eight weeks after a written negotiation request, FRUTAROM is able to terminate the contract without notice.
6. Should the Supplier file a request for the opening of insolvency or comparable proceedings against its own assets, or the request for the opening of insolvency or comparable proceedings against the Supplier's assets filed by a third party be denied for lack of assets, FRUTAROM may rescind the Contract in whole or in part.

### **3. Packaging, Dispatch, Delivery and Acquisition of Ownership**

1. The Supplier shall observe FRUTAROM's specifications regarding the dispatch of the products, in particular the then current transport, packaging, and delivery regulations. Delivery shall take place in packaging suitable for the type of products. In particular, the products shall be packaged in a manner to avoid transport damages. Packaging materials shall be used only to the amount necessary for this purpose. Environment-friendly and recyclable packaging materials may be used only. As compensation for the accruing disposal costs, the Supplier shall, at the end of each calendar quarter, pay a lump sum amounting to 0.3% of the net order value of this calendar quarter. The use of reusable packaging shall be permissible with FRUTAROM's prior written consent only. The Supplier must indicate on the packaging the scope of delivery, item and material numbers, order quantity and date of manufacture as well as the date of order, in particular the order number, order date and Supplier number.
2. The dispatch of the products shall be notified immediately. To the extent it is agreed that FRUTAROM assumes the freight charges, FRUTAROM is entitled to determine the freight forwarder and freight handling. FRUTAROM shall only bear the costs to the

amount of the most reasonably priced type of dispatch, even if faster transportation is necessary in order to meet the agreed delivery periods and dates. A bill of delivery with the scope of delivery, item and material numbers, delivery amount, date of manufacture and date of order and in particular the order number, order date and Supplier number must be attached to all deliveries made.

3. To the extent that a delivery not subject to turnover tax comes into consideration, the Supplier shall provide the necessary evidence to the extent it is responsible therefore. For deliveries within the European Union, the Supplier shall, without being asked and in writing, state its turnover tax identification number, provide evidence of its status as an entrepreneur, and assist in providing evidence of exportation by accounts or vouchers.
4. Deliveries can be made on working days and during normal business hours from Monday to Thursday from 7:30 hrs to 14:00 hrs and Fridays from 7:30 hrs to 11:00 hrs only. The Supplier shall indemnify FRUTAROM from and against any and all claims of third parties asserted by reason of delivery outside these hours unless the Supplier is not responsible for the delivery outside these normal business hours.
5. When delivering the products, the Supplier shall comply with the Ordinance on Hazardous Substances (*GefStoffV*); it shall in particular package and indicate the products accordingly and expressly state hazardous substances on the bill of delivery.
6. Ownership in the products shall be transferred to FRUTAROM directly and free from any encumbrances as soon as they are handed over. The Supplier warrants entitlement to resale and transfer of ownership of the products.

#### **4. Delivery Period**

1. The delivery periods and dates stated in the order or otherwise agreed are binding. The delivery periods start from the order date. The products must have arrived at the delivery address stated by FRUTAROM within the delivery period or on the agreed delivery date.
2. In case it becomes clear to the Supplier that the delivery period cannot be met, it shall immediately inform FRUTAROM in writing, stating reasons therefore and the anticipated duration of delay.
3. In case of a delay in delivery and after expiration of a reasonable grace period set by FRUTAROM, FRUTAROM shall be entitled to rescind the contract regardless of fault of the Supplier. In case the Supplier is in delay, FRUTAROM shall be entitled to claim a contractual penalty to the amount of 0.5% of the net order value for each week of said delay or part thereof, however not exceeding 5% of the net order value; this shall not apply if the Supplier is not responsible for the delay in delivery. FRUTAROM must assert the contractual penalty together with the final payment at the latest. Cases of force majeure shall be excluded. Further claims of FRUTAROM shall remain unaffected.

FRUTAROM's claim for delivery will cease to apply when the Supplier pays damages in lieu of delivery upon FRUTAROM's request only. Taking of the delayed delivery shall not constitute waiver of damage claims or contractual penalty.

4. Delivery prior to the agreed delivery date shall be permissible with FRUTAROM's prior written consent only. FRUTAROM shall be entitled to store at the Supplier's expense or to return prematurely delivered products at its expense, unless the earliness is negligible.

## **5. Prices and Payment**

1. The price shown in the order shall be binding and shall apply "*free domicile*". Unless otherwise agreed in writing, the price shall in particular include costs for packaging, dispatch devices, and transport to the delivery address stated by FRUTAROM as well as customs duties and other public levies. Statutory value-added-tax is included in the price unless expressly stated as net price.
2. FRUTAROM shall be entitled to determine the type of packaging, the means of transport, the route of transport, and the transport insurance. The Supplier is obligated to effect transport insurance. The costs for such transport insurance shall be borne by the Supplier unless otherwise agreed.
3. FRUTAROM shall receive one single original of the Supplier's invoice. It must not be attached to the delivery, but must be sent separately. Invoices without order number, order date, or Supplier's number are deemed not received for lack of processability.
4. Payment shall be made after taking delivery of the products and receipt of the invoice within 14 days less a 3% discount, within 21 days less a 2% discount, or within 30 days net. Payment shall be made under reserve of invoice verification. FRUTAROM may of its own choice effect payment by check or bank transfer also. In case of faulty delivery, FRUTAROM shall insofar be entitled to withhold payment until proper performance without loss of rebates, cash discounts, or similar price deductions. The payment period shall commence upon complete removal of the defects. For premature deliveries, the payment period shall commence with the expiry of the delivery period or upon the agreed delivery date at the earliest. Insofar as the Supplier has to provide material samples, test records, documentation of quality, or other documents, the payment period shall commence upon taking delivery of the products only if the documents owed are handed over to FRUTAROM upon taking delivery of the products at the latest. In case of delay in payment, the Supplier may, taking into consideration the current interest rate level, claim default interest of 2 percentage points above the then respective base interest rate p.a. The Supplier shall be entitled to rescind the contract after expiration of a reasonable grace period that it has set FRUTAROM upon occurrence of the delay in payment, unless FRUTAROM is not responsible for the delay in payment. The Supplier is obligated to declare bindingly upon FRUTAROM's request within a reasona-

ble grace period whether the Supplier, after expiration of the grace period due to the delay in payment, rescinds or adheres to the contract.

## **6. Passing of Risk**

1. The Supplier shall bear the risk of incidental destruction or incidental deterioration of the products up to their delivery to FRUTAROM.
2. In case the Supplier is obligated to install or assemble the products at FRUTAROM's site, the risk shall pass to FRUTAROM upon installation or assemble of the products only. This shall also apply in case FRUTAROM has assumed further obligations, such as transport costs.

## **7. Warranties, Claims based on Defects and Guarantees**

1. The Supplier warrants that the delivered products comply with applicable statutory provisions and the regulations and directives of public authorities, trade associations, and industrial unions. The Supplier shall indemnify FRUTAROM from and against any and all claims of third Parties asserted against FRUTAROM or its customers by reason of breach of such provisions. This shall not apply if the Supplier is not responsible for said breach of such provisions. FRUTAROM shall be informed immediately in writing if the Supplier has any reservations about the execution of an order as requested by FRUTAROM.
2. FRUTAROM shall notify the Supplier of apparent defects within two weeks after taking delivery of the products and of hidden defects within two weeks following their discovery. If a delivery consists of a multitude of equal products, FRUTAROM shall examine a reasonable amount only of the delivered products for defects. Insofar as the products should become unsaleable by reason of the examination, then a random sample of the delivered products shall be sufficient. If individual samples of a delivery are defective, FRUTAROM may at its own choice request the Supplier to single out the defective products or it may assert claims based on defects for the complete delivery. If, as a result of defects of the products, an examination exceeding the usual extent of the inspection of incoming products is necessary, the Supplier shall bear the costs of such examination. In case of delay or loss of the notification, the timely dispatch shall be sufficient.
3. To the extent the delivered products are not marketable or must be properly disposed by FRUTAROM due to defects and pursuant to applicable legal provisions, FRUTAROM shall be entitled to dispose of them at the Supplier's expense.
4. In case of defective products, FRUTAROM, notwithstanding statutory claims based on defects, shall be entitled to request, as subsequent performance at its own choice, re-

medial of the defects or delivery of products free of defects by the Supplier. The Supplier shall bear the costs necessary for subsequent performance. This shall also apply if the products were redelivered in accordance with their intended use to any place other than the delivery address indicated by FRUTAROM. In case the Supplier fails to subsequently perform within a reasonable time period set by FRUTAROM, FRUTAROM may, at the Supplier's risk and expense, take the necessary measures itself or have the same taken by third Parties, unless the Supplier is not responsible for the failure of due performance within the grace period. The grace period is dispensable if the Supplier definitely and seriously refuses performance or if particular circumstances are at hand which, taking into account the mutual concerns, justify that the necessary measure is taken immediately. Particular circumstances in this case apply in particular in urgent cases in which subsequent performance by the Supplier would most likely not remedy the pending disadvantage of FRUTAROM. In this case FRUTAROM is entitled to undertake the necessary measures at the cost and risks of the Supplier also without the unsuccessful expiry of a reasonable grace period, provided that FRUTAROM notifies the Supplier thereof.

5. The taking delivery of the products as well as the processing, payment, and repeat order of products whose defects have not yet been discovered and notified shall neither constitute approval of the delivery nor waiver of claims based on defects by FRUTAROM.
6. FRUTAROM's limitations period for claims based on defects is 24 months, starting from the delivery of the products. Claims based on defects notified within the limitations period shall lapse at the earliest six months after filing of the notice. If FRUTAROM purchases the products for purposes of resale, the limitations period shall begin on the day on which the limitations period regarding the resale of the products begins, however at the latest twelve months after FRUTAROM has taken delivery of the products. This shall apply accordingly if FRUTAROM purchases the products for processing purposes. The foregoing shall not apply if FRUTAROM has maliciously concealed the defect.
7. Suppliers of products with spare parts are obligated to supply FRUTAROM with the required spare parts, accessories and tools for a time period of a further ten years following the expiry of the limitations period at the current prices plus an inflationary adjustment.
8. Any exceeding guarantees of the Supplier shall remain unaffected.

## **8. Product Liability**

1. The Supplier is obligated to indemnify FRUTAROM from and against any and all third Party claims asserted in Germany and abroad based on product liability unless it is, according to principles of product liability laws, not responsible for the defect and the damage incurred. Any exceeding claims of FRUTAROM shall remain unaffected.

2. Within the context of this obligation to indemnify, the Supplier shall reimburse FRUTAROM in particular such expenses incurred from or in connection with a warning, exchange, or recall action carried out by FRUTAROM. FRUTAROM will, to the extent possible and reasonable, inform the Supplier of the contents and scope of the measures to be taken and give it the opportunity to comment. The Supplier shall use its best efforts to support FRUTAROM in the measures to be taken and shall take all reasonable measures instructed by FRUTAROM.
3. The Supplier is obligated to effect and maintain a product liability insurance with coverage adequate for the products of at least € 3 million per personal injury for each individual person and at least € 5 million per damage to property. The Supplier assigns to FRUTAROM, with effect as from today, all claims in connection with the product liability insurance with any and all ancillary rights. FRUTAROM accepts such assignment with effect as from today. If the insurance agreement does not allow for such assignment, the Supplier herewith instructs the insurance company to make payments to FRUTAROM only. Any exceeding claims of FRUTAROM shall hereby remain unaffected. The Supplier shall upon request provide FRUTAROM with evidence of the conclusion and existence of the product liability insurance. The Supplier shall refrain from each act and omission that might endanger the insurance coverage.
4. In case the Supplier fails to duly meet its obligation under paragraph 3, FRUTAROM is entitled but not obligated to effect a product liability insurance at the Supplier's expense.

## **9. Property Rights of Third Parties**

1. The Supplier warrants that no patents, licenses, or other property rights or copyrights of third parties are infringed by the delivery and use of the products. This shall not apply insofar as products were developed by FRUTAROM.
2. To the extent a third party makes a claim based on the delivery and use of the products on FRUTAROM or its customers due to an infringement of such rights, the Supplier is obligated to indemnify FRUTAROM from and against such claims. Such duty to indemnify shall cover all expenses incurred by FRUTAROM in connection with the claim. In particular, FRUTAROM shall be entitled to obtain, at the Supplier's expense, approval from the third party to use the products. The duty to indemnify shall not apply if the Supplier is not responsible for the infringement of the third party's property rights.

## **10. Force Majeure**

1. In case FRUTAROM is hindered by force majeure from compliance with its contractual duties, in particular from taking delivery of the products, FRUTAROM shall, for the duration of the hindrance and a reasonable restart time, be released from its duty to per-

form without being obligated to pay damages to the Supplier. The same shall apply if the fulfillment of FRUTAROM's obligations is unreasonably impeded or temporarily impossible due to unforeseeable circumstances beyond FRUTAROM's control, in particular due to strike, measures of public authorities, lack of energy, or material interruptions of operation. FRUTAROM may refuse to take delivery of the products if such circumstances constrain the sale of the products due to a decrease in demand. This shall also apply if such circumstances occur at a date on which FRUTAROM is in default of taking delivery.

2. FRUTAROM shall be entitled to rescind the contract if such hindrance continues for more than four months and the performance of the contract is, due to such hindrance, no longer of interest to FRUTAROM. Upon request of the Supplier, FRUTAROM will declare after expiration of the period whether it will exercise its right of rescission or take delivery of the goods within a reasonable period.

## **11. Liability of FRUTAROM**

1. FRUTAROM shall be fully liable for damages resulting from a breach of warranty or from harm to life, physical injury, or harm to health. The same shall apply in case of intent or gross negligence. For slight negligence, FRUTAROM shall be liable only to the extent material duties are breached, such duties resulting from the nature of the contract and being of essential importance for the attainment of the purpose of the contract. In case of breach of such duties and in case of default and impossibility of performance, FRUTAROM's liability shall be limited to damages that are typically expected to occur within the context of the contract. Statutory product liability shall remain unaffected.
2. Any preclusion or limitation of FRUTAROM's liability shall also apply for the personal liability of FRUTAROM's employees, staff members, representatives, and auxiliary persons.

## **12. Confidentiality**

1. The Parties are obligated, for an unlimited period, to keep confidential any and all information that become available to them and that are indicated confidential or are otherwise identifiable as business or trade secrets and, unless necessary for the business relationship, to neither record nor hand on nor exploit them.
2. The Parties will, by appropriate binding agreements to be concluded with the employees and agents acting on their behalf, ensure that such employees and agents, for an unlimited period, neither exploit nor hand on nor record such business and trade secrets for their own purposes.

### 13. Final Provisions

1. The Supplier shall be entitled to transfer rights and duties to third Parties or have a third Party execute an order or essential parts thereof with the prior written consent of FRUTAROM only.
2. Payments shall be made to the Supplier only. Counterclaims of the Supplier entitle it to compensation only if they are undisputed or legally established. The Supplier is entitled to right of retention only if its counterclaim is based upon the same contractual relationship.
3. Subcontractors of the Supplier are considered vicarious agents and shall be communicated to FRUTAROM in writing immediately upon request.
4. The legal relationship of the Supplier and FRUTAROM shall be governed by, and construed in, accordance with the laws of the Federal Republic of Germany to the exclusion of the United Nations Sales Convention (CISG).
5. Exclusive venue for any and all disputes arising out of the legal relationship between FRUTAROM and the Supplier shall be FRUTAROM's statutory seat. FRUTAROM shall also be entitled to bring action at the Supplier's statutory seat and at any other permissible venue.
6. Place of fulfillment of all obligations of the Supplier and of FRUTAROM shall be FRUTAROM's statutory seat.
7. Should an individual provision of these General Purchasing Terms and Conditions be or become ineffective or unenforceable in whole or in part, or should these General Purchasing Terms and Conditions contain a regulatory gap, the validity of the remaining provisions shall not be affected thereby. Instead of the invalid or unenforceable provision, a valid or enforceable provision shall be deemed to be agreed which comes as close as possible to the purpose of the invalid or unenforceable provision. In case of a regulatory gap, a provision shall be deemed to be agreed which corresponds to the provision that would have been agreed in terms of the object of these General Purchasing Terms and Conditions if the Parties had considered the matter.