

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

### **1. Scope**

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

### **2. Conclusion of Contract**

1. Offers quoted by FRUTAROM are subject to change and nonbinding.
2. Specifications as to weight and dimension, as well as any other descriptions of the products contained in the documents pertaining to the offer shall only be approximate unless expressly specified as binding. They constitute neither agreement nor guarantee as to the characteristics of the products.
3. FRUTAROM reserves all rights of ownership, copyrights, and any other property rights to all offer documents. Such documents must not be made available to third parties.

4. Orders are not binding until they have been confirmed by FRUTAROM in a written order confirmation or until FRUTAROM performs the order or in particular when FRUTAROM fulfills the order with the consignment of the product. Any order confirmation processed by use of automatic appliances and lacking signature and name is considered a written order confirmation. Silence of FRUTAROM as to offers, orders, requests, or other declarations of the customer is deemed consent only if there is a prior written agreement to that effect. To the extent the order confirmation contains obvious errors, misspellings, or miscalculations, FRUTAROM shall not be bound to it.
5. Should the customer file a request for the opening of insolvency or comparable proceedings against its assets, or should the request for the opening of insolvency or comparable proceedings against the customer's assets filed by a third party be denied for lack of assets, FRUTAROM may rescind the contract in whole or in part.

### **3. Scope of Delivery**

1. The written order confirmation of FRUTAROM is authoritative for scope of delivery. Changes to the specification or scope of delivery by the customer require the written confirmation of FRUTAROM to be effective.
2. Delivery in part is permissible.
3. FRUTAROM reserves the right to make excess or short deliveries of up to 10% of the scope of delivery for technical reasons.

### **4. Delivery Dates and Periods**

1. Delivery periods and dates must be agreed in writing and are non-binding unless expressly specified by FRUTAROM as binding in writing in advance.
2. The delivery period begins when the order confirmation is sent by FRUTAROM, however not before the customer has provided all documents, approvals, and releases to be provided by it, and an agreed down-payment has been received, respectively in case of international orders not before payment has been received in full. In case of delivery dates the delivery date will be rescheduled accordingly. All delivery dates and periods are subject to the due and timely fulfillment of all further obligations of the customer.
3. The delivery date respectively period is deemed met if the products have left the factory or FRUTAROM has communicated the shipping readiness or the readiness for collection within the delivery period or by the delivery date. All delivery dates and periods are subject to due and timely self-supply of FRUTAROM.

4. In case of delay in delivery, the customer is entitled to rescind the contract after a reasonable grace period, which it had set FRUTAROM upon commencement of the delay in delivery has expired unsuccessfully.
5. Should FRUTAROM and the customer have entered into a framework contract on future deliveries with fixed delivery periods and dates, and should the customer fail to call the products in due time, FRUTAROM is entitled to deliver and invoice the products after a reasonable grace period set by FRUTAROM has expired unsuccessfully, to rescind the contract, or to claim damages or reimbursement of expenses whereas damages or reimbursement of expenses can only be claimed if the customer is responsible for the failure to call the products in due time.

## **5. Prices and Payment**

1. Unless specific agreements are made to the contrary, all prices apply ex works and are exclusive of shipping and packaging costs, insurance, statutory taxes, customs duties, or other levies. The costs incurred in this context, in particular the costs for packaging and transport of the products, will be invoiced separately. Statutory VAT will be shown separately on the invoice at the statutory rate valid on the day of invoicing.
2. Orders without expressly agreed fixed prices and with a delivery period or date of six weeks following the conclusion of contract will be invoiced at the list prices of FRUTAROM valid on the day of delivery. The recording of the list price valid on the order date on the order form or order confirmation does not constitute agreement of a fixed price. The customer shall be entitled to rescind the contract to the extent prices are increased by more than 5%. The customer will promptly notify FRUTAROM upon the latter's request of whether or not it will exercise such right of rescission. If production-related price increases occur by the date of delivery, FRUTAROM shall, irrespective of the offer and order confirmation, be entitled to adjust the prices accordingly.
3. Unless a separate agreement is made to the contrary, the net delivery price is payable within 14 days following the invoice date. Deduction of discount requires that the customer fulfills all outstanding debts of the business relationship within the time stipulated. The day of payment is considered the day FRUTAROM is able to dispose of the delivery price. If the customer defaults payment, it shall pay default interest of 8 percentage points above the respective base interest rate p.a. Any exceeding claims of FRUTAROM shall remain unaffected.
4. In case of international orders, payment shall, in derogation of paragraph 3 above, take place prior to delivery unless otherwise agreed in advance in writing.

## **6. Passing of Risk**

1. The risk of accidental loss and accidental deterioration shall pass to the customer as soon as the products have been handed over to the person effecting transport or have left the warehouse of FRUTAROM for purposes of shipment. In case the customer collects the products, the risk of accidental loss and accidental deterioration shall pass to the customer upon notification of readiness for collection. Sentences 1 and 2 above shall also apply for partial deliveries or if FRUTAROM has assumed additional services, e.g., the transport costs or setup of the products at the customer's site.
2. If the customer falls into default in accepting the products, FRUTAROM is entitled to demand compensation for the damage incurred including possible additional expenses. The same applies if the customer violates any other obligations to co-operate, unless the customer is not responsible therefore. Where the customer falls into default in accepting the products or violates any other obligations to co-operate, the risk of accidental loss and accidental deterioration of the products shall pass to the customer at the time the customer falls into default of acceptance at the latest. FRUTAROM is entitled to otherwise dispose of the products after the unsuccessful expiry of a reasonable grace period set by FRUTAROM and to supply the customer within a reasonably extended period.
3. In case shipping is delayed due to circumstances FRUTAROM is not responsible for, risk shall pass to the customer upon notification of shipping readiness.
4. The delivered products must be accepted by the customer even if they have minor defects, without this affecting its claims based on defects.

## **7. Claims based on Warranty, Defects, Liability**

1. FRUTAROM ensures that the delivered products comply with relevant legal provisions in Germany. Product specifications shall apply to the product itself only and not to its application or use. The customer is solely responsible for compliance with the use and labeling of the products for import and application as well as the relevant applicable local and national legal regulations and guidelines issued by public authorities, professional cooperations and trade associations.
2. The rights of the customer to assert claims based on defects presuppose that the customer inspects the delivered products upon receipt and notifies FRUTAROM of any apparent defects in writing without delay, however no later than two weeks after receipt of the products. Hidden defects must be reported to FRUTAROM in writing promptly after their discovery. The customer must describe the defects in writing when notifying FRUTAROM of said defects.

3. In case the products are defective, FRUTAROM shall at its own choice render subsequent performance either by removing the defect or by delivering a product free of defects. When rendering subsequent performance, FRUTAROM shall be obligated to bear all expenses required in this respect, in particular transport, shipping, personnel, and material costs, unless such expenses are increased due to the fact that the products were shipped to a place other than the delivery address. Costs for personnel and material asserted by the customer in this context shall be invoiced at cost price. Replaced parts pass into the ownership of FRUTAROM and shall be returned to it.
4. In case FRUTAROM is not prepared or able to render subsequent performance, the customer may, without prejudice to any claims for damages or reimbursement of expenses, at its own choice either rescind the contract or reduce the delivery price. The same shall apply in case subsequent performance fails, is unreasonable for the customer, or is unreasonably delayed for reasons attributable to FRUTAROM.
5. The customer's right to rescind the contract is excluded if the customer is unable to return the performance received and (i) this is not attributable to the fact that return is impossible due to the nature of the performance received, or (ii) FRUTAROM is responsible for it, or (iii) the defect was not revealed until the product was processed or modified. The right to rescind is also excluded if FRUTAROM is not responsible for the defect and if the customer must compensate the value instead of returning the performance.
6. The assertion of claims based on defects is excluded if the defect is due to improper handling, operation, or storage of the products by the customer or third parties. The same shall apply for defects attributable to the customer or resulting from a technical cause other than the original defect.
7. Claims of the customer for reimbursement of expenses instead of claims for damages in lieu of performance are excluded unless a reasonable third party would have incurred such expenses.
8. FRUTAROM does not assume any warranty, in particular any warranty of quality or durability, unless otherwise agreed in writing.
9. FRUTAROM is fully liable for damages resulting from a breach of a guarantee or from harm to life, physical injury, or harm to health. The same applies for intent and gross negligence. FRUTAROM is liable for slight negligence only if material duties are violated, such duties arising out of 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, liability of FRUTAROM shall be limited to damages that are typically expected to occur within the context of the contract. Statutory liability for product defects remains unaffected.
10. The limitation period for claims based on defects asserted by the customer shall amount to one year. This limitation period shall also apply for claims in tort based on a defect of the products. The limitation period begins when the products are delivered. The shortened limitation period shall not apply to the unlimited liability of FRUTAROM

for damages resulting from a breach of a guarantee or from harm to life, physical injury, or harm to health, for intent and gross negligence, and for product defects. Any comment of FRUTAROM on a claim based on defects asserted by the customer shall not constitute an opening of negotiations on such claim or on the facts giving rise to the claim, provided that FRUTAROM rejects the claim based on defects to the full extent.

11. To the extent that liability of FRUTAROM is excluded or limited, this shall also apply for the personal liability of the employees, staff members, representatives, and auxiliary persons of FRUTAROM.

## **8. Product Liability**

1. The customer will not modify the products; in particular, it will not modify or remove existing warnings about risks due to improper handling of the products. In case of breach of this undertaking, the customer shall internally indemnify FRUTAROM from and against any and all product liability claims asserted by third parties unless the customer is not responsible for the defect causing liability.
2. In the event FRUTAROM is caused to call back or send a warning notice due to a defect in the products, the customer shall use its best efforts to support FRUTAROM and take part in all reasonable measures that FRUTAROM deems reasonable and appropriate; in particular, the customer will establish the necessary customer information. The customer shall bear the costs for the product recall or warning notice unless it is not responsible for the defect in the products and the loss occurred according to the principles of product liability laws. Further claims of FRUTAROM shall remain unaffected.
3. The customer will promptly inform FRUTAROM in writing about any and all risks in connection with the use of the products and any possible defects in the products that become known to it.

## **9. Force Majeure**

1. In case FRUTAROM is hindered by force majeure from the fulfillment of its contractual duties, in particular from supplying the products, FRUTAROM shall, for the duration of the hindrance and a reasonable restart period, be released from its duty to perform without being obligated to pay damages to the customer. The same shall apply if the fulfillment of the obligations of FRUTAROM is unreasonably impeded or temporarily impossible due to unforeseeable circumstances beyond the control of FRUTAROM, in particular due to strike, measures of public authorities, lack of energy, difficulties in supply on the part of a sub-contractor, or material interruptions of operation. This also applies if such circumstances affect sub-contractors and in case FRUTAROM is in de-

fault. To the extent FRUTAROM is released from its obligation to supply, FRUTAROM will grant back preliminary performances of the customer as may have been made.

2. FRUTAROM shall be entitled to rescind the contract after a reasonable grace period has elapsed if such hindrance continues for more than four months and the performance of the contract is no longer of interest to FRUTAROM due to such hindrance. Upon the customer's request, FRUTAROM will after expiration of such grace period declare whether it will exercise its right of rescission or will deliver the products within a reasonable period.

## **10. Retention of Title**

1. FRUTAROM retains title to the delivered products until the purchase price and any and all claims against the customer that FRUTAROM is entitled to under their business relationship have been fully settled. For the duration of the retention of title, the customer shall handle the products subject to retention with care. It shall in particular sufficiently insure the products subject to retention at its own expense at replacement value against fire, water, and theft damage. The customer shall provide FRUTAROM upon the latter's request with proof of the insurance policy. The customer assigns to FRUTAROM, with effect as from today, all claims for compensation in connection with such insurance. FRUTAROM herewith accepts such assignment with effect as from today. If the insurance agreement does not allow for such assignment, the customer herewith instructs the insurance company to make payments to FRUTAROM exclusively. Any exceeding claims of FRUTAROM shall remain unaffected.
2. The customer is permitted to sell the products subject to retention of title in the ordinary course of business only. The customer shall not be entitled to pledge the products subject to retention, to transfer them by way of security or to otherwise dispose of them in a way endangering title of FRUTAROM. The customer shall promptly notify FRUTAROM in writing of any attachment or any other intervention by a third party, provide all information required, inform the third party of the title of FRUTAROM, and assist in all measures of FRUTAROM in order to protect the products subject to retention. To the extent the third party is not able to reimburse FRUTAROM the judicial and extrajudicial costs for enforcing title of FRUTAROM, the customer shall reimburse FRUTAROM the loss sustained by FRUTAROM in this connection unless the customer is not responsible for the breach of duty.
3. The customer assigns to FRUTAROM, with effect as from today, all claims in connection with the resale of the products with any and all ancillary rights, irrespective of whether the products subject to retention were resold prior or after processing. FRUTAROM accepts such assignment with effect as from today. If such assignment is not permissible, the customer herewith instructs the third party debtor to make payments to FRUTAROM exclusively. The customer shall be revocably authorized to collect the claims assigned to FRUTAROM in trust for FRUTAROM in the customer's own name. The amounts collected shall be transferred to FRUTAROM immediately.

FRUTAROM may revoke the customer's authorization for collection and resale for cause, in particular if the customer fails to duly meet its payment obligations vis-à-vis FRUTAROM, defaults or ceases payment, or if the customer files for the opening of insolvency proceedings or similar debt settlement proceedings against its own assets, or if the request for the opening of insolvency or comparable proceedings against the customer's assets filed by a third party is denied for lack of assets. In case of a blanket assignment by the customer, the claims assigned to FRUTAROM shall expressly be exempted.

4. Upon request of FRUTAROM, the customer shall promptly notify the third party debtor of the assignment and provide FRUTAROM with any information and document necessary for collection.
5. In case the customer conducts itself contrary to the terms of the contract, in particular in case it defaults in payment, FRUTAROM shall, without prejudice to its other rights, be entitled to rescind the contract after a reasonable grace period set by FRUTAROM. The customer shall promptly grant FRUTAROM or its authorized agents access to the products subject to retention and return them. After due and timely notice, FRUTAROM may otherwise dispose of the products subject to retention in order to satisfy its matured claims against the customer.
6. The processing or remodelling of the products subject to retention by the customer shall always be made for FRUTAROM. The customer's expectancy right to the products subject to retention shall also apply to the processed or remodeled item. Should the products be processed or remodeled together with other objects not belonging to FRUTAROM, FRUTAROM shall gain joint title in the new item in the proportion of the value of the delivered products to the other, processed objects at the time of such processing or remodeling. The same shall apply in case the products are connected or mixed with other objects not belonging to FRUTAROM in such manner that FRUTAROM loses full ownership. The customer shall keep the new objects for FRUTAROM. In all other regards, the item created through processing or reconstruction as well as connection or mixing is subject to the same provisions as the products subject to retention.
7. In case the realizable value of the securities, taking into account usual valuation adjustments by the banks, exceeds the claims of FRUTAROM arising from the business relationship with the customer by more than 15%, FRUTAROM shall at the customer's request be insofar obligated to release the securities the customer is entitled to. The valuation should be based on the invoice value of the products subject to retention and on the nominal value of the claims. The choice of the security to be released is upon FRUTAROM in each case.
8. In case of delivery to other legal systems in which the above provisions of retention of title do not have the same retaining effect as in the Federal Republic of Germany, the customer hereby grants FRUTAROM a corresponding security interest. The customer will take all further measures that are necessary in this respect to grant FRUTAROM

such corresponding security interest. The customer shall assist in all measures necessary or conducive for the effectiveness and enforceability of such security interests.

## **11. Confidentiality**

1. The parties undertake to keep confidential and neither to record, hand on, or use any information that becomes available to them and that is indicated confidential or is in other circumstances identifiable as business or trade secrets for an unlimited period, unless required for the business relationship.
2. By appropriate binding agreements, the parties will ensure that the employees and agents acting on their behalf neither record without authorization nor hand on nor exploit such business and trade secrets for an unlimited period.

## **12. Final Provisions**

1. The transfer of rights and obligations of the customer to third parties requires the prior written consent of FRUTAROM.
2. The customer shall be entitled to set off only if its counterclaims have been determined in a legally final manner or are unchallenged. The customer may exercise a right of retention only to the extent its counterclaim is based on the same contractual relationship.
3. The legal relationships between the customer 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).
4. Exclusive venue for any and all disputes arising out of or in connection with the business relationship between the customer and FRUTAROM shall be the statutory seat of FRUTAROM. FRUTAROM shall also be entitled to bring an action at the customer's statutory seat and at any other permissible venue.
5. Place of performance for all obligations of the customer and FRUTAROM shall be the statutory seat of FRUTAROM.
6. Should an individual provision of these General Terms and Conditions of Sale be or become ineffective or unenforceable in whole or in part, or should these General Terms and Conditions of Sale contain a regulatory gap, the validity of the remaining provisions shall not be affected thereby. Instead of the ineffective or unenforceable provision, the effective or enforceable provision shall be deemed to be agreed which comes as close as possible to the economic purpose of the ineffective or unenforceable provision. In case of a regulatory gap, the provision shall be deemed to be agreed which corre-

sponds to the provision that would have been agreed in terms of the object of these General Terms and Conditions of Sale if the parties had considered the matter.