

# General Terms & Conditions

## FRUTAROM Savory Solutions Germany GmbH

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hereinafter referred to as "FRUTAROM"

### 1. Applicability

These General Terms and Conditions (GTC) only apply to entrepreneurs in the exercise of their commercial or self-employed professional activity and to legal entities under public law. They apply to all current and future deliveries and services provided by FRUTAROM to the purchaser, even if these deliveries or other services are provided by FRUTAROM without the use of or express reference to these GTC.

Any deviating contractual conditions of the purchaser are expressly rejected. The sending of an order confirmation by FRUTAROM shall also not be deemed an acknowledgement of the purchaser's contractual conditions.

This shall not affect any rights to which FRUTAROM is entitled under the statutory provisions or under other agreements over and above these GTC.

### 2. Contract conclusion

The offers of FRUTAROM are non-binding and subject to change without notice. Orders placed by the purchaser shall only be accepted upon written confirmation of the order by FRUTAROM or upon delivery or performance.

The information and illustrations contained in brochures or similar documents and provided with an offer are only binding if they are expressly designated as such. Minor deviations from the description of the offer relating to the delivered item are deemed approved and do not affect the performance of the contract, provided that the deviation is reasonable for the purchaser. This applies in particular in the event of changes and improvements in the interests of technical progress.

### 3. Prices

Unless otherwise agreed, prices are quoted ex works and do not include shipping and packaging costs, insurance, statutory taxes, customs duties or other charges. Any such costs, insurance, customs duties and charges will be invoiced separately. The statutory value added tax will be shown separately on the invoice at the statutory rate applicable on the date of invoice.

The prices quoted in the price lists are subject to change without notice. The entry of the list price valid on the day of the order in an order form or an order confirmation does not constitute an agreement on a fixed price. In the event of price increases exceeding 10%, the purchaser is entitled to withdraw from the contract. At FRUTAROM's request, the purchaser will immediately declare whether they will exercise their right of withdrawal.

### 4. Invoicing and payment terms

FRUTAROM issues its invoices exclusively in euros. FRUTAROM's invoices are due for payment net within ten days from the date of invoice. Purchasers from another EU member state must notify FRUTAROM of any VAT number at the latest when placing the order.

In the event of late payment, FRUTAROM will charge interest on arrears in the amount of the statutory interest between entrepreneurs. The reminder, collection and other costs associated with the collection of receivables will be borne by the purchaser.

If the purchaser is in arrears with a payment due, if a cheque or promissory note issued by same is not honoured, if insolvency proceedings are instituted against the purchaser's company or an application for insolvency proceedings is rejected for lack of assets, or if other facts become known which result in a significant deterioration of the purchaser's financial situation, if the purchaser's company is dissolved or if enforcement measures are initiated against significant parts of the purchaser's assets, or if for other reasons there are considerable doubts as to the solvency or willingness of the purchaser to pay, FRUTAROM shall be entitled to demand immediate payment of all outstanding invoices, even if cheques or bills of exchange have already been given for this, as well as to demand advance payment for all outstanding deliveries or, subject to FRUTAROM's other rights, to withdraw from the contract, giving a reasonable grace period. The purchaser can avoid the assertion of these rights by providing FRUTAROM with acceptable security.

All payments are to be made free of charges and without deduction, unless otherwise agreed in writing and in particular all transfer, cheque, bill of exchange charges and all levies are to be borne by the purchaser. Payments can only be made with debt-discharging effect to FRUTAROM or to representatives of the supplier company who have been authorised by the company to collect the debts. Payments are only valid if the corresponding amount is credited to FRUTAROM's bank account or if received by FRUTAROM itself. Payments shall always first be credited against the costs (dunning charges, legal costs, etc.), then against the interest and finally against the capital, namely against the oldest debt in each case. Any instructions of the debtor to the contrary are ineffective. Any written remarks made by the purchaser on payment slips cannot be acknowledged by FRUTAROM as data processing is carried out by automatic methods and such remarks are irrelevant.

Bills of exchange and cheques are in all cases only accepted as conditional payment. The conditional effect shall only become effective once the respective amount has been irrevocably credited to FRUTAROM. A discount deduction is excluded in the case of payment by bill of exchange. FRUTAROM can refuse payments offered by cheque or bill of exchange without giving reasons.

### 5. Prohibition of assignment

Any assignment of claims of the purchaser against FRUTAROM is not permitted without FRUTAROM's prior written consent.

If purchase price claims or claims for incidental costs (e.g. interest on arrears or collection costs) are outstanding, claims which the purchaser may have against its customers due to the resale of the goods supplied by FRUTAROM may not be assigned.

#### **6. Delivery and transfer of risk**

FRUTAROM shall be entitled to make partial deliveries unless otherwise agreed in writing. Each partial delivery is regarded as a separate transaction and can be invoiced separately by FRUTAROM. An excess or short delivery of up to 10% of the quantity of spices and active ingredients shall be deemed contractual performance.

In individual cases, risk shall pass in accordance with the agreed INCOTERMS. If no such agreement exists, risk shall pass to the purchaser as soon as the consignment has been handed over to the person carrying out the shipment or as soon as it has left FRUTAROM's warehouse for dispatch. If dispatch is delayed at the request of the purchaser, risk shall pass to same upon notification of readiness for dispatch.

FRUTAROM provides no guarantee and is not liable for the carriage or the selection of the persons involved.

In all cases, risk shall pass to the purchaser upon dispatch, even if carriage paid delivery has been agreed. If dispatch is delayed for reasons attributable to the purchaser or their vicarious agents, risk shall pass to the purchaser when the goods are made available. In the event of a delay in acceptance, the purchaser shall – subject to any other rights to which they are otherwise entitled – be liable to pay storage expenses.

If ex works (EXW) has been agreed, FRUTAROM shall, on request of the purchaser, make auxiliary staff available in individual cases to facilitate rapid loading. The use of such auxiliary staff is free of charge and at the purchaser's risk.

The applicable INCOTERMS version is generally the INCOTERMS® 2010 version.

Delivery dates are not binding. Failure to meet the delivery dates shall entitle the purchaser to assert their statutory rights only if FRUTAROM fails to perform the delivery or service despite a reasonable grace period having been set in writing. The delivery deadline is deemed to have been met if the products leave the factory or FRUTAROM has notified the readiness for collection or dispatch before expiry of the delivery deadline. The delivery period shall be extended by the duration of the hindrance due to all circumstances not covered by the intent of the party, such as late delivery by any sub-suppliers, cases of force majeure, official intervention, transport and delay in customs clearance, transport damage, energy and raw material shortages and labour disputes. If delivery periods and dates have not been agreed in writing, FRUTAROM shall not assume any warranty or liability for compliance with same.

#### **7. Retention of title**

Until all claims (including all current account balance claims) owing to FRUTAROM, now or in the future, vis-à-vis the purchaser for any legal reason have been satisfied, FRUTAROM shall be granted the following securities, which FRUTAROM will release on request (at its discretion), provided that their value exceeds the claims by more than 10% in the long term. The valuation shall be based on

the invoice value of the products subject to retention of title and the nominal value of receivables.

The goods shall remain the property of FRUTAROM. If FRUTAROM's (co-)ownership expires due to combination, it is already now agreed that the (co-)ownership of the purchaser of the resulting item shall pass to FRUTAROM in proportion to the value (invoice value). The purchaser shall safeguard FRUTAROM's (co-owned) property free of charge. Goods in which FRUTAROM has (co-)ownership are hereinafter referred to as reserved goods.

The purchaser is entitled to process and sell the reserved goods in the ordinary course of business as long as the purchaser is not in default. Pledging, assignment as security or other dispositions putting the property of FRUTAROM at risk are not permitted. The purchaser hereby assigns to FRUTAROM by way of security in full all claims (including all current account balance claims) arising from the resale or for any other legal reason (insurance, tort) in respect of the reserved goods. FRUTAROM hereby accepts this assignment. Should an assignment not be permissible, the purchaser hereby instructs the third-party debtor to make any payments only to FRUTAROM. FRUTAROM revocably authorises the purchaser to collect the claims assigned to FRUTAROM for their account in its own name. The amounts collected must be paid to FRUTAROM without delay. This authorisation to collect may be revoked for good cause, in particular if the purchaser does not properly meet their payment obligations. In the event of a global assignment by the purchaser, the claims assigned to FRUTAROM must be expressly excluded.

In the event of third parties accessing the reserved goods, in particular by means of attachments, the purchaser shall draw attention to FRUTAROM's ownership and inform FRUTAROM immediately so that it can enforce its ownership rights.

In the event of breach of contract on the part of the purchaser – in particular payment default – FRUTAROM shall be entitled, without prejudice to other rights, to withdraw from the contract after expiry of a reasonable grace period set by FRUTAROM and to demand the return of the reserved goods. The purchaser must grant FRUTAROM or its agents immediate access to the reserved products and surrender them. After giving appropriate notice, FRUTAROM may otherwise dispose of the products subject to retention of title to satisfy its claims against the purchaser.

The purchaser is obliged to insure the reserved goods in accordance with the principles of a prudent businessman and is further obliged to provide the corresponding evidence upon request. The purchaser hereby assigns to FRUTAROM any insurance claims or any claims for compensation due to the loss or deterioration of the reserved goods and FRUTAROM hereby accepts this assignment. Should the assignment not be permissible, the purchaser hereby instructs the insurer to make any payments to FRUTAROM only. Further claims by FRUTAROM shall remain unaffected.

In the case of deliveries to other legal systems in which this retention of title provision does not have the same collateralisation effect as in the Federal Republic of Germany, the purchaser hereby grants FRUTAROM a corresponding security right. If further measures are necessary for this, the purchaser shall do everything in their

power to grant FRUTAROM such a security right without delay. The purchaser shall participate in all measures which are necessary and beneficial for the effectiveness and enforceability of such security rights.

#### **8. Claims for defects**

FRUTAROM products are delivered free of manufacturing and material defects; in general, the period for asserting claims for defects is one year from delivery of the products. Deviating from this, the warranty period corresponds to the respective shelf life of the goods up to the best before date. FRUTAROM guarantees that the goods are in the agreed condition at the time of handover to the freight forwarder. If FRUTAROM's instructions for use are not followed, changes are made to the products or deviations are made from the dosages recommended by FRUTAROM or applications are made in deviation from the original specifications, no rights for defects shall arise. If the purchaser instructs FRUTAROM to produce mixtures or formulations originating specifically from the purchaser, FRUTAROM shall not assume any warranty for the use intended by the purchaser.

The purchaser must notify FRUTAROM in writing of any defects immediately, but no later than two weeks after receipt of the item of delivery. Defects which cannot be discovered within this period even after careful examination must be reported to FRUTAROM in writing immediately after discovery, at the latest within two weeks after discovery of the defect. If the purchaser notifies FRUTAROM in good time that the goods are defective, FRUTAROM may, at its discretion and expense, demand that

- the goods be sent to FRUTAROM for the purpose of inspection and, if necessary, for repair and subsequent return;
- the purchaser keep the goods ready and that one or more employees of FRUTAROM be sent to the purchaser to inspect the goods.

If subsequent improvement is not possible or fails after a reasonable period of time, the purchaser may, at their discretion, demand a reduction in the remuneration or demand that the goods be replaced.

In principle, FRUTAROM will only accept returns after prior consultation and express approval.

#### **9. Liability and compensation for damages**

FRUTAROM has unlimited liability for damages arising from a breach of warranty or injury to life, body or health. The same applies to intent and gross negligence or if FRUTAROM has assumed a procurement risk. FRUTAROM shall only be liable for slight negligence if essential obligations are violated which arise from the nature of the contract and which are of particular importance for achieving the purpose of the contract. In the event of a breach of such essential obligations, delay and impossibility, FRUTAROM's liability shall be limited to such damages, the occurrence of which must typically be expected within the framework of this contract. The mandatory legal liability for product defects remains unaffected.

Insofar as FRUTAROM's liability is excluded or limited, this shall also apply to workers, employees, representatives and vicarious agents of FRUTAROM.

#### **10. Industrial property rights and copyrights**

All graphics and other works originating from FRUTAROM within the meaning of copyright, in particular print motifs designed by FRUTAROM, are the property of FRUTAROM. Any use by the customer, purchaser or third parties requires the prior written consent of FRUTAROM. FRUTAROM shall not be liable for infringements of the rights of third parties, in particular not for copyrights or industrial property rights, if documents are provided by the customer or if FRUTAROM complies with the purchaser's specifications regarding the design for the performance of the contract. FRUTAROM is not obliged to carry out any enquiries in this respect; the customer is responsible for checking them.

If FRUTAROM is held liable by third parties for the use, exploitation or duplication of the documents provided by the customer/purchaser or its specifications due to the infringement of the rights of third parties, in particular copyrights, industrial property rights or due to the infringement of the law against unfair competition, the customer/purchaser must support FRUTAROM in defending against this infringement and must compensate FRUTAROM for all damages, including legal fees and costs incurred as a result.

Designs, final artwork and printing plates produced by FRUTAROM remain the property of FRUTAROM.

#### **11. Sausage casings and packaging**

Sausage casings printed or assembled to order are excluded from return and exchange – except in the case of justified quality defects in the raw material (tube casing) and in the case of obvious packaging defects (printing, binding, gathering, etc.). In the printing processes used, slight colour deviations from the specified printing colours or those provided for in the design are possible and shall be deemed to be contractual performance. A colour deviation shall be regarded as minor if the contractual purpose, in particular the use of these colours in the client's business with customers, is not impaired.

In the case of products made to order, the purchaser undertakes to also accept partial deliveries. An excess or short delivery of up to 10% of the quantity shall be deemed contractual performance.

Rejects of up to 3% of the quantity of all sausage casings delivered to the purchaser on special order shall be deemed to be in accordance with the contract.

#### **12. Data protection**

The processing of the purchaser's personal data is required to perform the contract concluded with the purchaser. FRUTAROM processes the purchaser's contact, order and payment information. The basis for the processing is the contract concluded between the parties (Art. 6(1)(b)) of the EU's General Data Protection Regulation). Any further processing is carried out exclusively within the framework of the law or with the consent of the purchaser.

Details regarding the scope of the processing of the purchaser's personal data can be found in the general data protection information (Art. 12-14 GDPR) on our website [www.frutaromsavory.com](http://www.frutaromsavory.com).

### **13. Other agreements**

FRUTAROM Savory Solutions Germany GmbH is registered under the registration number DE1996866394503 as a manufacturer of packagings subject to systemic contributions.

These GTC and all legal relations between the purchaser and FRUTAROM shall be governed by the law of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods do not apply and are expressly excluded.

If the purchaser is a merchant, a legal entity under public law or a special fund under public law, Traunstein shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. FRUTAROM shall also be entitled to institute legal proceedings at the purchaser's registered office and at any other permissible place of jurisdiction. Arbitration clauses are objected to.

Should a provision in these GTC or a provision within the framework of other agreements be or become invalid, the validity of all other provisions of these GTC or the other agreement shall remain unaffected.