

# TERMS AND CONDITIONS OF SALE OF ORGANIC FLAVOUR COMPANY B.V.



## 1. General provisions

1.1 These terms and conditions will apply to all offers of and agreements of sale concluded or to be concluded by Organic Flavour Company B.V., hereinafter referred to as "the Seller" and another party.

1.2 Any oral offers or commitments will bind the Seller only after and to the extent that the Seller has confirmed them in writing. All offers of the Seller, however they are made, will be free of obligation unless provisions to the contrary have been laid down in writing.

1.3 An agreement will be deemed to have been concluded after the Seller has confirmed a written order placed by the buyer, or has commenced the execution of the order.

1.4 For the purpose of these terms and conditions e-mail messages of the Seller will be qualified as written statements/notifications.

1.5 The Seller will be entitled to adjust prices agreed upon before delivery in the event of increases in cost-determining factors such as fluctuations in exchange rates, raw materials, labor costs or in the event of government measures, provided that such increases or measures occurred after the conclusion of the agreement but before delivery.

1.6 The buyer will be entitled to cancel an order only after receiving written consent from the Seller, which consent may be made subject to conditions as deemed appropriate by the Seller.

1.7 Any requests of the buyer under any agreement concluded with the Seller for deviation of the quantities of products within the contract term provided for in such agreement must be made in writing with the Seller. The Seller, at its discretion, will decide whether or not to accept any such request. In the absence of such written request:  
- in case of a demand decrease: the Seller will deliver the remaining contract quantity in the first month following completion of the contract term;  
- in case of a demand increase: the Seller will hold no obligation whatsoever to deliver the required additional quantity.

1.8 In the event of early termination of any agreement concluded between the Seller and the buyer, the latter will remain liable for any raw materials, packaging materials used or designated to be used by the Seller for performance of the relevant contract and any remaining stock of finished product produced by virtue of the relevant agreement.

1.9 The Seller reserves the right to deviate from the agreed quantity of products by five percent (5%), notwithstanding the buyer's obligation to pay the actual quantity delivered.

## 2. Delivery

2.1 Parties will agree on the delivery terms in writing. The delivery terms will be in accordance with the most recent version of the Incoterms. The buyer is obliged to take delivery of the goods upon the Seller's first request.

2.2 If the buyer refuses to take delivery of the goods or fails to provide the information or instructions required for the delivery, the Seller will be entitled to store the goods at the risk and expense of the buyer. In that event, the buyer will owe any and all additional costs, including at any rate storage costs and transportation costs.

2.3 Any delivery times quoted by the Seller may not be considered to be firm deadlines, unless provisions to the contrary have been explicitly agreed upon in writing and the Seller's management board has granted its consent. In the event of late delivery, the Seller must be formally declared to be in default, in which connection the Seller will be granted an additional reasonable term to fulfill its obligations. In the event that such extended term is exceeded, the buyer will be entitled to dissolve the agreement or part of the agreement only with respect to the goods not delivered. In such an event, the Seller will not be liable to pay damages, unless such damages are the consequence of an intentional act or intentional omission or of gross negligence of the Seller's executive management.

2.4 The Seller is entitled to deliver the goods sold piecemeal.

## 3. Payment

3.1 Unless otherwise agreed in writing, all prices are quoted exclusive of VAT. All payments must be made in euros, unless otherwise agreed in writing.

3.2 Unless otherwise agreed in writing, the buyer will pay the entire purchase price, or the remainder thereof in the event of advance payment, within fourteen (14) days after the invoice date, at the discretion of the Seller, by transfer to or deposit into an account indicated by the Seller, without any deduction, discount or set-off. Submission of a complaint will not suspend the buyer's obligation to pay.

3.3 If the buyer fails to pay within fourteen (14) days after the invoice date, it will be in default and all claims of the Seller will become fully due and payable immediately. In that event, the Seller will also be entitled to compensation of the statutory interest (as it applies to trade agreements) with respect to the outstanding amount until the date of payment in full. The amount subject to this contractual interest will be calculated after the end of each year, and increased by the interest owed over that year.

3.4 In the event of untimely payment, The Seller will be entitled to compensation of all extra-judicial costs, including but not limited to costs involved in sending reminders, one or more notices of default or demand notices, which extra-judicial costs will amount to at least fifteen percent (15%) of the total amount payable, subject to a minimum of EUR 500.

3.5 The Seller will be entitled to require the buyer to effect advance payment of an amount to be determined at the Seller's discretion before it commences the execution of an order or commission.

3.6 In the event that the Seller is fully or largely successful in legal proceedings, the buyer will be obliged to compensate all costs incurred by the Seller in connection with such proceedings, even to the extent that such costs exceed the cost award made by the court. The Seller may invoke this clause irrespective of whether the buyer has appealed against the relevant judgment at the court of appeal or the Supreme Court.

## 4. Retention of title

4.1 The Seller will retain title to the goods delivered and to be delivered to the buyer until full payment of all purchase amounts has been received, as well as any amounts owed by the buyer pertaining to work performed by the Seller in connection with such purchase agreements and any claims pursuant to any attributable failure in the performance of such agreements on the part of the buyer.

4.2 As long as the title to the goods delivered has not passed to the buyer, it may not pledge the title to such goods, transfer the ownership of such goods or grant any rights to such to any third parties.

4.3 The buyer will be obliged to store the goods delivered under retention of title with due care, ensuring that they are recognizable as the property of the Seller. In addition, it will be obliged to insure such goods against, inter alia, fire and water damage and theft. The buyer will pledge to The Seller any claims it has pursuant to such insurance policies upon the Seller's first request, as additional security with respect to the Seller's claims against the buyer.

4.4 In the event that the buyer fails in the performance of any obligation vis-à-vis the Seller, or in the event that the Seller has good reason to fear that the buyer will fail in the performance of its obligations, the Seller will be entitled to recover the goods delivered under retention of title or to have such recovered. The buyer will cooperate accordingly. The buyer will bear the costs of recovery, without prejudice to the Seller's right to claim further damages.

## 5. Force majeure

5.1 If the Seller fails in the performance of its obligations due to an event of force majeure, it will not be liable. To the extent

that the circumstance making performance impossible is not of a permanent nature, The Seller's obligations will be suspended. In the event that the period during which performance is not possible due to force majeure exceeds three (3) months or is expected to exceed three (3) months, both parties will be entitled to cancel the agreement, without any obligation to pay the damages that may arise as a result.

5.2 In the event that the Seller has already partially fulfilled its obligations upon the occurrence of the situation of force majeure, or is only able to fulfill its obligations in part, it will be entitled to separately invoice the part already supplied or the part that can still be supplied and the buyer will be obliged to pay that invoice as if it pertained to a separate agreement.

5.3 A situation of force majeure affecting the Seller within the meaning of this article will be deemed to have occurred in the event of, inter alia, strikes, a shortage of raw materials, a default at the side of any sub-contractor or supplier, transport problems, war or threat of war, full or partial mobilization, riots, sabotage, floods, fire or other forms of destruction within the Seller's company, lockouts and industrial actions, breakdowns of machines or tools or other breakdowns within the Seller's company, government measures, and compliance with any law, regulation or order, by any government or agency whether valid or invalid. A situation of force majeure must also be deemed to have occurred on the part of the Seller in the event that one or more of the above-mentioned circumstances occurs within the companies of the Seller's suppliers and the Seller cannot or could not perform its obligations, or cannot or could not perform such in good time, as a consequence.

## 6. Conformity, Complaints and Inspection

6.1 Unless otherwise agreed in writing, the goods will in any event be deemed to be in conformity if they comply with the specifications set forth in the agreement, even if the buyer did not notify the Seller of a specific purpose or use of the goods.

6.2 Unless otherwise agreed in writing, the goods delivered must be checked by or for the buyer upon arrival of the goods at the agreed destination with respect to numbers and visible defects and any shortages or visible defects must be reported to the Seller immediately after delivery. The buyer must report defects not visible upon delivery within 48 hours of their discovery, though in any event within 48 hours after the time that the buyer should reasonably have discovered them. Unless otherwise agreed in writing, the goods delivered must also be checked by or for the buyer upon arrival of the goods at the agreed destination with respect to the agreed specifications and any non-compliance in that regard must be reported to the Seller no later than 8 working days after arrival of the goods at the agreed destination. The possibility of submitting a complaint will lapse in the event that the relevant defect can be attributed to the buyer.

6.3 Defects in parts of the goods stated in the Seller's confirmation do not entitle the buyer to reject the entire delivery of the goods, if any, do not affect buyer's obligation to pay as defined.

6.4 The buyer will be obliged to perform the inspection with due care or to have the inspection performed with due care. The buyer will bear the risk for inspecting the goods by means of random checks and may not rely on the fact that it did not observe a defect that was visible and could have been discovered upon delivery because it-or a third party engaged by it-did not inspect the entire shipment.

6.5 In the event of a complaint on good grounds, the Seller will be obliged only-at its own discretion-to repair the defect, to replace the relevant good, to supply the missing parts or to credit or refund the amount charged in connection with the defective good in whole or in part, according to its own reasonable judgment. Returned goods shall only be accepted after the Seller's written approval of return. Valuation of the returned goods to be credited shall be made at the Seller's discretion.

6.6 All rights of the buyer and all obligations of the Seller in relation to the delivery of any defective goods, on whatever basis, will lapse at the earliest of the following times: a) upon late reporting pursuant to Article 6.2 or b) 3 months after

the delivery date.

## 7. Liability

7.1 Any obligation on the part of the Seller and any right of the buyer in regard to the conformity of the goods will be restricted to the provisions laid down in Article 6.5.

7.2 The Seller will not-irrespective of the legal basis of the buyer's claim-be liable with respect to consequential damage such as, inter alia, losses due to delays, lost profits and penalties forfeited by the buyer. In any event, without prejudice to Articles 2, 6 and 7, the Seller's liability will in no event exceed the lesser of the amount paid out by the Seller's insurance company per occurrence or series of occurrences with one and the same cause of damage or per insurance year.

7.3 The above-mentioned restrictions with respect to liability will not apply in the event that the damage is the consequence of an intentional act or intentional omission or of gross negligence on the part of the Seller's executive management.

7.4 The buyer will indemnify the Seller against any claims by third parties in connection with goods supplied by the Seller.

## 8. Suspension and dissolution

8.1 Without prejudice to the Seller's rights under these terms and conditions or under the law, the Seller will at any rate be entitled to suspend (further) performance or to dissolve any agreement concluded with the buyer, in whole or in part, with immediate effect if (i) any goods made available by the Seller to the buyer become subject to attachment, (ii) the buyer is granted a suspension of payments or is declared bankrupt, (iii) any permits or licenses required for the performance of the agreement are withdrawn, (iv) the buyer fails to fulfill one or more of its obligations ensuing from any agreement with the Seller, (v) the Seller has sound reasons

to believe that the buyer is or will be unable to fulfill its obligations under any agreement, or (vi) the buyer ceases its business or if a change occurs in the control of that business. Any right of the buyer to suspend performance is hereby excluded. The Seller is in any event entitled to terminate any agreement concluded with the buyer upon 3 month's written notice, without the buyer being entitled to claim damages.

## 9. Applicable law and dispute resolution

9.1 These terms and conditions, and all offers and agreements as referred to in Article 1.1 will be governed by Dutch law. The UN Convention on Contracts for the International Sale of Goods ("CISG") does not apply.

9.2 In the event that the buyer is domiciled in a Member State of the European Union or in Norway, Liechtenstein, Switzerland or Iceland at the time that proceedings are commenced, any and all disputes relating to the offers and agreements as referred to in Article 1.1 will be settled by the competent court in Amsterdam, the Netherlands. The above will not affect the Seller's power to submit a dispute to the court that would be competent in the absence of this provision.

In the event that the buyer is not domiciled in a Member State of the European Union or in Norway, Liechtenstein, Switzerland or Iceland upon the commencement of proceedings, any and all disputes relating to the offers and agreements as referred to in Article 1.1 will be settled in accordance with the rules of the Netherlands Arbitration Institute [Nederlands Arbitrage Instituut, or NAI]. Arbitration will take place in Amsterdam, the Netherlands. The arbitration proceedings will be conducted in Dutch.

These Terms and Conditions of Sale have been filed at the office of the Trade Register of the Chamber of Commerce, file number: 38024235

These Terms and Conditions are applicable with effect from 1 July 2009 and are subject to change at any time without notice.

Only the English version of these Terms and Conditions shall be authentic and shall prevail, in case of inconsistency, over any translation of these terms and Conditions in another language.