

# General Terms & Conditions

## FRUTAROM Savory Solutions Austria GmbH

A.-Schemel-Straße 9  
5020 Salzburg  
Austria  
FN 50475

hereinafter referred to as "FRUTAROM".

### 1. Validity

These General Terms and Conditions apply to all present and future supplies and services provided to the Purchaser by FRUTAROM, even if these supplies or other services from FRUTAROM are provided without the use of or express reference to these General Terms and Conditions.

The Purchaser acknowledges and accepts these General Terms and Conditions when he places an order, or at the latest on receipt of the goods, any agreement to the contrary requires consent in writing from FRUTAROM.

Any terms of the Purchaser's contract contrary to these General Terms and Conditions shall be expressly rejected. Even the sending of an order confirmation by FRUTAROM does not imply acknowledgement of the Purchaser's contractual terms by FRUTAROM.

### 2. Conclusion of the contract

Quotations from FRUTAROM are subject to confirmation. Orders placed by the Purchaser are not accepted until confirmed in writing by FRUTAROM or until delivery is made or the service is performed.

The information and illustrations included in brochures and similar documents or supplied with a quotation are only binding if there is express indication to that effect. Where an item supplied shows slight variations from the description in the quotation these are deemed to be approved and do not affect the fulfilment of the contract provided the deviation in question seems reasonable to the Purchaser. This applies in particular where modifications and improvements are made in the interest of technological progress.

### 3. Prices

The prices shown in the price lists are subject to confirmation. The prices as shown in FRUTAROM's price lists in effect on the date of the conclusion of the contract between the parties shall apply. Should FRUTAROM's price lists be changed between the conclusion of the contract and delivery then the Customer must pay the revised amount. However, should prices increase by more than 10 % between the conclusion of the contract and delivery then the Customer shall be entitled to withdraw from the contract.

### 4. Billing and payment terms

FRUTAROM issues invoices exclusively in Euros. Payment of FRUTAROM's invoices is due within ten days net from the billing date. Purchasers from other EU member states must notify FRUTAROM of any UID number at the time of ordering at the latest.

In the event of late payment FRUTAROM shall charge interest on arrears at the current rate of statutory default interest charged between entrepreneurs. The Purchaser shall be responsible for any collection, encashment or other charges in connection with the recovery of the amounts owed.

If a Purchaser falls behind with a payment that is due, or if a cheque issued by him or an acceptance cannot be cashed or if foreclosure measures are introduced against a not insignificant proportion of his assets, or if for any other reason considerable doubt should arise as to the Purchaser's ability or willingness to pay, then FRUTAROM shall be entitled to demand immediate payment of all outstanding invoices, even if cheques or bills of exchange have already been sent, as well as to demand advance payment for any deliveries still outstanding or, subject to any other rights which FRUTAROM is entitled to under the contract, to postpone such deliveries to an appropriate later date. The Purchaser can avoid the assertion of these rights by providing some form of security acceptable to FRUTAROM.

All payments shall be made free of charges and without deductions and in particular the Purchaser shall be responsible for the payment of all transfer, cheque and bill of exchange charges as well as all other deductions. Even if claims are made concerning defects, or counterclaims are asserted, the Purchaser is only entitled to set these off against his account, or withhold payment or pay a reduced amount if these counterclaims have been established in law or are undisputed. Payments may only be made to FRUTAROM or to designated representatives of the delivery firm with an authority to collect issued by FRUTAROM. Payment is not deemed to have been made until the amount in question has been credited to FRUTAROM's bank account or has been received at FRUTAROM's premises. Payments will always be credited first against charges (collection fees, processing costs), then against interest charges and finally against capital and this always against the oldest debt. Any instructions to the contrary from the debtor shall be null and void. Due to FRUTAROM's automated data processing system, it is not possible for any written notes made by the Purchaser on payment slips or giro transfer forms to be heeded and as such they will be disregarded. Bills of exchange and cheques will always only be accepted as payment. Cash discount deductions cannot be made for payment by bill of exchange. FRUTAROM may refuse payments made by cheque or bill of exchange without giving any reason.

## 5. Cession ban

A transfer of any claims of the Purchaser against FRUTAROM is inadmissible.

In so far as purchase price claims or claims for additional costs (e.g. interest on arrears or recovery costs) remain unsettled, a transfer of claims that the Purchaser has towards his customers because of the resale of goods supplied by FRUTAROM is not admissible.

## 6. Delivery and transfer of risks

FRUTAROM has the right to make part deliveries unless there is an agreement to the contrary in writing. Each part delivery counts as a separate transaction and may be invoiced separately by FRUTAROM. An excess or short delivery of up to 5 % of the quantity of spices and functional ingredients is deemed to meet the terms of the contract.

The transfer of risks takes place in individual cases according to the INCOTERMS agreed. If no agreement exists in this regard, then the risk is transferred to the Purchaser as soon as the consignment has been handed over to the person responsible for transportation or has left the FRUTAROM warehouse for the purpose of shipping. If shipping is delayed at the request of the Purchaser, the risk shall be transferred to him when notification is given that the goods are ready to be dispatched.

FRUTAROM does not accept any responsibility and is not liable for transportation or for the selection of the persons involved in it.

The risk is in any case transferred when the goods are dispatched to the Purchaser, even if carriage free delivery has been agreed. If there is a delay in dispatching the goods for reasons attributable to the customer or his vicarious agents, then the risk shall be transferred to the Purchaser when the goods are made available for dispatch. If there is a delay in acceptance of the goods, the Purchaser – unless any other rights are due to him – shall be obliged to pay interest on storage.

If ex works (EXW) is agreed, then FRUTAROM shall make support staff available for fast loading, in particular cases, on Purchaser's request. Deployment of support staff shall be free of charge, and at the risk of the Purchaser.

The underlying version of the INCOTERMS is generally the version of INCOTERMS® 2020.

Information given regarding delivery dates is non-binding. If FRUTAROM fails to observe delivery dates, the Purchaser shall only be entitled to assert the legal rights due to him if FRUTAROM does not provide the delivery or service even after an appropriate period of grace has been set in writing. The delivery date shall be extended by the duration of the hindrance due to all circumstances not included in the intention of the parties, such as, for example, late delivery by any suppliers, incidents of force majeure, action by the authorities, transport or customs clearance delays, damage in transit, shortage of power or raw materials and industrial disputes. If delivery periods and delivery dates have not been agreed in writing then FRUTAROM shall not accept any responsibility or liability for adhering to them.

## 7. Retention of title

Until payment of the purchase price has been made in full, all goods supplied including all incidentals shall remain the property of FRUTAROM.

The Purchaser shall have the authority, until revoked, to further process and dispose of such goods in the course of his normal business, provided he is not in arrears with FRUTAROM. Pledging of goods or transfers by way of security are not admissible. In the event of any other claims for compensation when reserved goods are disposed of, the Purchaser shall surrender to FRUTAROM all claims, with all ancillary rights, against his customers due to him as soon as the contract is concluded. The Purchaser has the authority, which may be withdrawn at any time, to call in the surrendered claims. However, he may not dispose of them in any other way.

If the Purchaser falls into arrears with his payments to FRUTAROM, or if there is a significant deterioration in the financial circumstances of the Purchaser, or if the Purchaser contravenes any other of his contractual obligations, then FRUTAROM is entitled to demand the restitution of the reserved goods and to dispose of them freely elsewhere and/or to call in any surrendered claims as security. The Purchaser shall undertake to allow FRUTAROM access to his premises and to take possession of or collect the goods. Before completing any sale by private contract FRUTAROM shall have an expert ascertain the value of the reserved goods and give the Purchaser the opportunity to identify any prospective purchasers.

The Purchaser must provide FRUTAROM with information about the existence of reserved goods and surrendered claims. The Purchaser must inform FRUTAROM immediately if third parties should seize the reserved goods or the surrendered claims and must support FRUTAROM in asserting its rights, in particular giving FRUTAROM all the documents and information required to do so. If a surrendered invoice amount of this type should be acquired by a third party then the Purchaser must demand this amount back from the third party and hand it over to FRUTAROM. In particular, the Purchaser must for his part, employ all the judicial remedies necessary to protect the rights of FRUTAROM.

The Purchaser must insure the reserved goods according to the principles of a reasonable businessman. The Purchaser shall here and now surrender to FRUTAROM any entitlement to make insurance claims or claims for compensation for the loss or deterioration of the reserved goods.

## 8. Guarantee

FRUTAROM guarantees that the condition of the goods shall be as agreed when they are handed over to the person responsible for transportation. Features other than those agreed are not guaranteed and do not form the basis of any entitlement to a guarantee. If the Purchaser uses the goods for any purpose other than those recommended by FRUTAROM or in a dosage other than that indicated by FRUTAROM then FRUTAROM will not provide any sort of guarantee. A guarantee is also excluded for mixtures that are based on the Purchaser's specifications, as well as for goods that at the request of the Purchaser are only passed on as supplied.

All information provided in our specifications corresponds to our state of knowledge at the time of issue. Our knowledge of the composition of our products and the raw

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materials used is based on internal measurements, supplier data and/or literature references. All information on the raw material or mixture, the formulation or composition and the packaging materials are prepared in accordance with the applicable European laws and regulations, in particular regarding purity, classification, packaging, shipping and labelling. Conditions of use and applicable laws may vary from country to country, especially outside the EU, and may change over time. It is the responsibility of the user to verify the suitability of the product and the information provided in this document for his purposes, in particular with regard to compliance with applicable laws and other government regulations.

The information of the declarable allergens in our products refer to the formula ingredients only, according to Regulation (EU) 1169/2011, Annex II. All allergen cross contact risks are minimized and assessed under a detailed allergen risk management program and a validated cleaning procedure.

Due to the complexity of the supply chain, a cross contact with substances and products according to REGULATION (EU) 1169/2011, Annex II, or other raw materials commonly used in the industry, cannot be fully excluded. An absence or the statement "free from" can therefore not be guaranteed by us.

In the event of justified complaints made by the Purchaser immediately, or at the latest within five working days after acceptance of the goods, FRUTAROM shall be entitled to exchange the goods or to grant a price reduction. All other claims, in particular for cancellation, are excluded.

Immediately on receipt of the goods supplied or the service provided the Purchaser shall inspect them for completeness, accuracy and other obvious defects and make any complaint in writing immediately, or at the latest within five days of receipt of the goods. When goods are dispatched directly to a third party, the period for inspection and making complaints begins once the goods have been received. The guarantee period corresponds to the storage life of the goods up until the best before date. Products with no best before date are guaranteed for 13 months after the transfer of risks. Any complaint must be made in writing and transmission via fax or e-mail is at the risk of the Purchaser. Wherever possible a sample of the goods should be sent. Goods may not be returned without the express agreement of FRUTAROM. The Purchaser must give FRUTAROM the opportunity to inspect the goods and must retain them and keep them ready for this purpose. If the Customer contravenes one of these conditions then he will lose all entitlement to make any claim on the basis of the alleged defect, whether it be under the guarantee section, the compensation section or on any other legal basis.

Returns are generally accepted by FRUTAROM only after prior contact and explicit approval.

### 9. Liability and compensation

FRUTAROM shall only be liable for damages in so far as such liability is provided for in essential law, and then only for damages that have occurred in spite of adequate incoming, intermediate and outgoing inspections being performed by the Purchaser.

FRUTAROM shall not be liable for loss of profits, anticipated savings that did not materialise, damages resulting from

third party claims against the Purchaser or indirect damages or consequential loss, provided the product liability law does not stipulate any mandatory regulations to the contrary.

Suggestions on how to process and use the products, and also any recipe suggestions are given by FRUTAROM according to the best of their knowledge and information. Anyone involved in the processing of FRUTAROM products is himself legally responsible for the observation of all the legal requirements, also, for example, in the field of patent law.

FRUTAROM does not accept any liability whatever for goods that the Purchaser wishes to pass on as supplied (for goods in their original packaging from upstream suppliers, which have to be identified as such for the conclusion of the contract). In such cases the obligation to carry out the inspections required to guarantee that the quality of the goods meets the legal requirements is transferred to the Purchaser.

Where FRUTAROM's liability is excluded or restricted this also applies to the company's employees, representatives and vicarious agents.

### 10. Industrial Property Rights and Copyright

In a copyright sense, all graphics and other works originating from FRUTAROM, in particular, prints designed by FRUTAROM are the property of FRUTAROM. Any use of such by clients or third parties requires prior written consent from FRUTAROM. FRUTAROM is not liable for any infringements of the rights of third parties, in particular for infringements of copyright or industrial property rights, when documents have been provided by the client or when the client's design guidelines have to be observed. In this regard, FRUTAROM does not make the necessary enquiries, such an investigation is the responsibility of the client.

Should legal action be taken against FRUTAROM by third parties due to the use, exploitation or copying of documents provided by the client or of the client's guidelines for infringing the rights of such third parties – particularly with respect to copyright or industrial property rights – or for infringing the law against unfair competition, the client is to support FRUTAROM in its defence of the infringement of such rights and reimburse FRUTAROM for all damage accruing to FRUTAROM, including legal costs.

Drafts, finished artwork and clichés produced by FRUTAROM remain the property of FRUTAROM.

### 11. Sausage casings and packaging

Sausage casings that have been printed or manufactured in special production may not be returned or exchanged - except in the event of quality defects found in the raw material (tube casing) or in the event of clear manufacturing faults (printing, binding, tightening, etc.). In terms of the printing processes used, slight deviations in colour from those provided, or in print colours planned in drafts, are possible and still count as fulfilled contractual performance. Deviation in colour is held to be slight when contractual purpose has not been adversely impaired, especially in respect of the use of these colours in the client's business with customers.

The customer undertakes to accept part deliveries also in the case of special productions. An excess or short delivery

of up to 10 % of the quantity is deemed to meet the terms of the contract.

In the case of all sausage casings supplied to the Purchaser as special production a delivery including up to 3 % defective goods is deemed to have met the requirements of 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 provisions**

All packing delivered by FRUTAROM is entirely released by Interzero Circular Solutions Europe GmbH under the licence number 126333.

Disputes over errors are excluded, as are disputes over breach of contract over or under half of the real value. Should individual provisions of this contract be invalid or subsequently cease to be invalid, then the validity of the rest of the contract shall remain unaffected. An invalid provision or a provision that has subsequently ceased to be valid will be replaced by FRUTAROM with a provision that comes as close as possible to the intended economic purpose of the provision that is null and void.

Austrian property law shall apply exclusively for these General Terms and Conditions and the entire privity of contract between the Purchaser and FRUTAROM, excluding the principles on conflicts of law and excluding the UN Convention on Contracts for the International Sale of Goods. Place of fulfilment for both parts is Salzburg. The court of jurisdiction for all disputes arising directly or indirectly out of the contract is the relevant competent court of the state capital Salzburg. FRUTAROM is entitled to appeal to another court that is competent for the Purchaser.

Where points are unclear from the English translation, then the German original version shall be the arbiter in case of doubt.