

## General Purchasing Terms / FRoSTA AG

### § 1 General

- (1) The Purchasing Terms of FRoSTA AG apply exclusively; the supplier's conditions that contradict or deviate from these Purchasing Terms will not be recognised, unless their validity is expressly approved in writing. These General Purchasing Terms also apply if the delivery is taken in without reservation, even in the knowledge of the supplier's conditions that contradict or deviate from these Purchasing Terms. These General Purchasing Terms apply to all orders for deliveries and other services, both now and in the future.
- (2) All agreements made between FRoSTA AG and the supplier for the purpose of executing a contract must be recorded in writing in this contract. Orders issued verbally or over the telephone therefore require subsequent confirmation from FRoSTA AG in text form to be legally valid. Orders, delivery call-ups and other changes and supplements can also be made electronically/by remote data transmission or through machine-readable data carriers.
- (3) These General Purchasing Terms only apply to undertakings in the sense of § 310 Para. 1 BGB.

### § 2 Conclusion of contract

- (1) The supplier is obliged to accept the order in text form within 2 weeks. The supplier's confirmations received at a later date or that deviate from the order are regarded as a new offer.
- (2) The conclusion of contract must be treated in confidence. Without the written approval of FRoSTA AG, the supplier is not authorised to refer to the business relationship in advertising materials. Without written approval in advance, the supplier is not entitled to disclose the order or significant parts of the order to third parties.
- (3) The contractual partners are obliged to treat all commercial or technical details not generally known, which become known to them through the business relationship, as business secrets. Sub-suppliers must be obliged accordingly. Such information could fall under the protection of the German Act (GeschGehG). If one of the contractual partners recognises that information to be kept secret has come into the possession of an unauthorised third-party or if a document to be kept secret has been lost, this shall be notified to the other contractual partner without delay.
- (4) FRoSTA AG reserves the title and the copyrights to illustrations, drawings, calculations and other documents; they could fall under the protection of GeschGehG. Regardless of this, these may not be made accessible to third parties without the specific, written approval of FRoSTA AG. They shall be used solely for production on the basis of the appropriate order; after the order has been processed, they must be returned to FRoSTA AG without further prompting. They must be kept secret from third parties. The obligation of secrecy continues to apply after this contract has been processed. It expires, however, if and insofar as the production knowledge contained in the illustrations, drawings, calculations and other documents provided becomes generally known or was demonstrably known to the supplier already at the time the message was conveyed in the sense of sentence 1.

### § 3 Prices – terms of payment

- (1) The price recorded in the order is binding and is agreed as a fixed price. Unless a deviating agreement exists in writing, the price includes delivery free to the buyers stated address of shipment or place of use, including packaging and transport. FRoSTA AG can unilaterally stipulate the mode of transport in the order. The return of packaging requires a separate agreement.
- (2) The price contains value-added tax at the prevailing rate. If prices are not stated in the order, the supplier's current list prices apply.
- (3) Visits or the preparation of offers, projects etc. shall not be remunerated.
- (4) Invoices shall not be processed unless they state the order number recorded there – in line with the stipulations of the order – and list the individual items; the supplier is responsible for all consequences arising from non-compliance with this obligation, unless it is able to demonstrate that it was not culpable for this.
- (5) Unless something different has been agreed in writing, the purchase price is payable within 14 days, calculated from the full delivery, any provision of agreed certification concerning material tests and receipt of the invoice, at 2% discount, or net within 30 days after receipt of invoice.
- (6) FRoSTA AG accrues the rights of offsetting and retention to the extent prescribed by law.
- (7) Our written approval is required to assign any claims directed against us.

### § 4 Delivery time

- (1) The delivery time stated in the order is binding. Advice notes of deep-frozen goods must be received at the latest by 12:00 noon on the day before the delivery.
- (2) Deliveries with a size or weight of more than 2 t may only be made after prior agreement with FRoSTA AG.
- (3) The supplier is obliged to inform FRoSTA AG of any postponement of delivery without delay, in writing, thereby stating the reasons and the likely duration, if circumstances occur or if it recognises that the set delivery time cannot be observed. This alters nothing to the agreed delivery date.
- (4) In case of default of delivery, FRoSTA AG accrues the claims prescribed under law. In particular, FRoSTA AG is entitled to demand damages instead of performance and withdraw from the contract after a reasonable deadline has expired fruitlessly. If FRoSTA AG demands damages, the supplier has the right to demonstrate that it was not culpable for the infringement of duty. The supplier cannot invoke the argument that necessary documents to be supplied by FRoSTA AG are missing, unless it sent a reminder of the missing documents in writing in good time, yet failed to receive them within a reasonable deadline.
- (5) In the case of Acts of God (unforeseeable circumstances and events that are beyond control, which could not have been prevented even with the care expected from a prudent businessman, such as force majeure, the danger of war, unrest, violence used by third parties against persons and property, industrial disputes, fire, interruption to the foreseen traffic links), put the

delivery deadline into abeyance for the duration of their effects. The right of FRoSTA AG to withdraw from the order in accordance with legal provisions remains unaffected, especially in case of a fixed transaction. If an Act of God prevents FRoSTA AG from making its acceptance or receipt, FRoSTA AG can postpone the acceptance or receipt accordingly, without entering into default of acceptance. If the hindrance lasts longer than three months, the supplier can set a reasonable deadline and, after this expires fruitlessly, is entitled to withdraw from the part of the contract that has not been fulfilled.

## **§ 5 Transfer of risk - documents**

- (1) Each delivery must be accompanied by delivery notes providing details of the contents and complete order designation. As long as these details are missing or are incomplete, the goods shall be stored at FRoSTA AG at the expense and risk of the supplier. The resulting delays in processing are not the responsibility of FRoSTA AG.
- (2) The supplier is obliged to deploy environmentally-friendly products and processes for the deliveries/services as well as for sub-supplies or third-party auxiliary services within the scope of what is financially feasible and technically possible. The supplier is liable for complying with legal regulations, especially with regard to the environmental compatibility of the products and packaging materials delivered, and for all subsequent damages that occur because of the infringement of legal duties of disposal. The supplier is obliged to submit the safety data sheets applicable to the delivery together with the delivery. The supplier shall release FRoSTA AG from all third-party claims to recourse in case the supplier does not deliver safety data sheets, delivers them late or erroneously, unless it is not culpable for this.
- (3) If delivery is made earlier than agreed, FRoSTA AG reserves the right of return at the supplier's expense. If an early delivery is not returned, the goods are stored at FRoSTA AG until the delivery date at the expense and risk of the supplier. In case of a premature delivery, FRoSTA AG reserves the right to make the payment first after the agreed dates of maturity.

## **§ 6 Inspection for defects – liability for defects**

- (1) Apart from the delivery being free of material defects and legal deficiencies, the supplier guarantees that all its deliveries conform to the pertinent legal provisions, the standards recognised by the industry and the regulations and guidelines of authorities and trade and professional associations. This especially applies to all foodstuffs law applicable in Germany.
- (2) FRoSTA AG is obliged to inspect the goods within a reasonable deadline for any deviations in quality or quantity and to complain of any defects; the complaint is made on-time if it is received by the supplier within 5 work days, in the case of obvious defects calculated from the complete delivery, or in the case of concealed defects after their discovery.
- (3) The claims to defects prescribed by law accrue to FRoSTA AG without limitation; in all circumstances, FRoSTA AG is entitled to demand from the supplier, at the discretion of FRoSTA AG, rework (if rectification is possible due to the nature of the defect) or delivery of a new item. The right to recompense damages is expressly reserved, especially to recompense damages instead of performance or diminution.
- (4) FRoSTA AG is entitled to rectify the defect itself at the expense of the supplier if the supplier is in default of subsequent fulfilment. Defects that endanger operational safety and which basically cost not more than € 1,000 net to rectify can be put right by FRoSTA AG itself – in fulfilment of its duty to minimise losses – without prior agreement, without this limiting the supplier's liability obligations for the defect. FRoSTA AG can charge the necessary expenditure to the supplier.
- (5) The deadline for expiry by time is 36 months, calculated from the transfer of risk, unless the overriding provisions of §§ 478, 479 BGB apply or if a longer period of expiry by time applies under law. If acceptance is delayed without the culpability of the supplier, the deadline for expiry by time is 36 months after provision of the object of delivery for acceptance. If rework becomes necessary, the supplier is obliged, upon request, to perform the rework outside the normal working hours, without being able to demand special recompense for this purpose.
- (6) The provisions of §§ 478, 479 BGB remain unaffected.

## **§ 7 Product liability - release – protection under indemnity insurance**

- (1) The supplier is obliged to release FRoSTA AG from third-party claims to damages at the first request, insofar as it is itself liable to the third-party in the outside relationship, especially under the aspect of product liability and manufacturer liability. Claims to release under legal regulations remain unaffected. The supplier must label all the delivered objects in such a way that they can be recognised as its own products.
- (2) Within the scope of its own liability for cases of damage in the sense of Para. (1), the supplier is also obliged to recompense any expenditure incurred by FRoSTA AG, which results from or is in connection with a legitimate call-back campaign conducted by FRoSTA AG. The supplier shall be informed in good time in advance – insofar as possible and reasonable – of the content and scope of such a call-back campaign and shall be given the opportunity to respond.
- (3) The supplier must implement a quality assurance system suitable in its scope and nature and conform to the latest state-of-the-art. Upon request, it shall demonstrate this system, even if the contractual parties have not concluded a quality assurance agreement. If a quality assurance agreement has been concluded, its provisions have priority. The supplier shall ensure that the machines and mechanical systems used do not produce any inadmissible physiological changes to the foodstuffs made with them.
- (4) The supplier is obliged to properly dispose of all materials accrued (e.g. packaging, chemicals, oils etc.) at its own expense or to send these for recycling and to also provide appropriate evidence of this. In case of infringements against this obligation and action is taken against FRoSTA AG because of this, the supplier shall release FRoSTA AG from all claims and legal drawbacks it suffers, unless the supplier is not culpable for the violation.
- (5) The supplier is obliged to maintain indemnity insurance (which also covers the costs of any call-back campaign) with a coverage sum – lump sum - of € 10 million per case of damage; this is not connected with a limitation of the liability sum towards FRoSTA AG.

## **§ 8 Protected rights**

- (1) The supplier guarantees that third-party rights are not violated within the Federal Republic of Germany or within the countries in which the products are manufactured by its delivery or by its use conform to contract.
- (2) If FRoSTA AG is pursued by a third-party due to a violation of such a right, the supplier is obliged to release FRoSTA AG from these claims at first written request. In such a case, FRoSTA AG is also entitled to obtain the permission required from the owner of the right at the expense of the supplier, if and insofar as the supplier does not acquire these within a reasonable deadline set by FRoSTA AG. In case of third-party claims to damages, the supplier is allowed to demonstrate that it was not culpable for violation of the third-party rights.
- (3) The supplier's duty of release refers to all applications, which are necessarily incurred by FRoSTA AG under or in connection with the pursuit by a third-party, including the costs required for legal advice and representation.

## **§ 9 Property – provision of equipment – tools – secrecy**

- (1) If FRoSTA AG provides parts for the supplier, these parts remain the property of FRoSTA AG. Processing or transformation by the supplier are performed solely on behalf of FRoSTA AG. If the parts are processed together with other objects not belonging to FRoSTA AG, FRoSTA AG acquires co-ownership of the new item in the ratio of the value of its item to the other processed objects at the time of processing.
- (2) If the item provided by FRoSTA AG is inseparably mixed with other objects, FRoSTA AG acquires co-ownership to the new item in the ratio of the value of the reserved item to the other mixed objects at the time of mixing. If mixing is performed in such a way that the supplier's item must be regarded as the main item, it is agreed that the supplier transfers proportionate co-ownership to FRoSTA AG; the supplier shall safeguard the sole ownership or the co-ownership on behalf of FRoSTA AG.
- (3) Tools provided by FRoSTA AG remain the property of FRoSTA AG; the supplier is furthermore obliged to deploy the tools solely to produce the goods ordered by FRoSTA AG. The supplier is obliged to ensure that the tools belonging to FRoSTA AG are insured at its own expense to their as-new value against damage from fire, water and theft. At the same time, the supplier even now assigns all claims to recompense under this policy to FRoSTA AG; FRoSTA AG hereby accepts the assignment. The supplier is obliged to perform any service, inspection, maintenance and repair work required to the tools of FRoSTA AG in good time at its own expense. It must notify any disturbances immediately; if it fails to do so, claims to recompense remain unaffected, unless the supplier is not culpable for failure to do so.

## **§ 10 Place of jurisdiction and fulfilment**

- (1) If the supplier is a merchant, the place of jurisdiction is the headquarters of FRoSTA AG; FRoSTA AG is nevertheless entitled to also take action against the supplier at its headquarters.
- (2) German law shall prevail. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- (3) Unless stated otherwise in the order, the place of fulfilment is the headquarters of FRoSTA AG.