

**General Terms of Sale and Supply  
of FRoSTA Aktiengesellschaft, Bremerhaven**

**Version dated 01.10.2018**

**I. Scope of validity**

1. All offers and agreements are exclusively subject to the following General Terms of Sale and Supply. Supplementary or deviating terms from Customer's side will only apply if we have expressly agreed them with the latter in writing. Our General Terms of Sale and Supply are also binding in case we accomplished a delivery without any reservations, knowing about the presence of supplementary or deviating terms of the Customer.
2. Verbal promises before conclusion of this contract are legally non-binding and verbal agreements of the contracting parties are replaced by the written contract, unless it is expressly clear from them that they continue to be binding.
3. Additions and amendments to the agreements made, including these terms and conditions, must be made in writing in order to be valid. With the exception of managing directors or authorized signatories, our employees are not entitled to make deviating verbal agreements. In order to preserve the written form, the transmission by fax or by e-mail is sufficient, provided the copy of the signed declaration is transmitted.
4. Our General Terms of Sale and Supply are also binding for future contracts concluded with customers within the frame of existing trade terms.

The GTC apply in particular to contracts for the sale and / or delivery of movable goods ("goods"), regardless of whether we manufacture the goods ourselves or purchase from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the terms and conditions in the valid at the time of the order of the buyer or at least in the form last communicated in text form or link to our homepage version as a framework agreement for similar future contracts, without us in would have to refer to each individual case again.

5. Our General Terms of Sale and Supply only apply with respect to persons who - at the time of concluding a legal transaction with us - are acting in the exercise of their trading or self-employed occupation (entrepreneurs within the meaning of § 14 German Civil Code), legal persons of Public Law and public separate property within the meaning of § 310 item 1 German Civil Code.

**II. Conclusion of contract, quality of our goods**

1. All our offers are without obligation until written declaration of acceptance by the Customer. We will remain bound by the prices quoted in offers, unless the Customer accepted them in writing earlier, for 30 days from the date of the offer concerned. A contract will not be concluded with us until the Customer receives our written order confirmation or until we start supplying goods or services. Contract content will be as specified in our offer, our order confirmation and these General Terms of Sale and Supply. Drawings, illustrations, dimensions, weights and other supply specifications are only binding if this is expressly agreed.
2. The contract is concluded with the reservation of correct and punctual deliveries of goods by our suppliers. The above clause is binding only in case when lack of supplies is not our fault, particularly in case of mutually agreed transaction with our supplier. In such a case we will inform the Customer without any delay on unavailability of goods or services and immediately return a mutual service.
3. The agreed quality of our goods include only those characteristics and features specified in our offer or our order confirmation. Other or more far-reaching characteristics and features will only be regarded as agreed quality if we have expressly agreed them with the Customer.
4. Statements on our part with regard to the quality and shelf life of goods by which we confer additional guarantee rights on the Customer without prejudice to his statutory rights will only represent a guarantee of quality and shelf life within the meaning of § 443 German Civil Code if we expressly describe them as a guarantee. The Customer's guarantee rights are exclusively as specified in the statement of guarantee.
5. We reserve the right to change recipes at any time if such change is acceptable by the Customer. A change is deemed as acceptable by the Customer if vital characteristics of the product remain unchanged. We have no right to make any modifications of a recipe unless otherwise expressly agreed.

**III. Delivery, passing of risk**

1. Unless otherwise expressly agreed, the deliveries are made "free house", whereby the transportation risk

lies by the customer.

2. Part deliveries are permissible, if acceptable by the Customer, unless they are expressly excluded.
3. If goods are to be supplied as called off by the Customer, the Customer must take the goods by a date three months after the conclusion of the contract at the latest. If the Customer fails to take some or all of the goods within this period, we will be entitled either to withdraw from the contract or to invoice the goods for immediate payment, whether taken or not. Further legal rights, in particular for self-help sales, remain unaffected.
4. The risk of the accidental destruction of or accidental deterioration to the goods will pass to the Customer as soon as we have handed them over for shipping to a forwarding agent, a carrier or any other person or organisation commissioned to transport them, but at the latest when they leave our plant or store. The above is binding also in case of partial deliveries and regardless of the fact whether franco freight delivery has been agreed. If the goods are ready for shipping and shipping is delayed for reasons for which we are not responsible, the risk will pass when the Customer receives the notification of shipping.
5. If loading aids (pallets etc.) are used for the shipping of the goods, the Customer is obliged to return the same number of loading aids of the same quality. If he fails to meet this obligation before the expiry of an appropriate granted deadline, he will owe us the sum required to purchase the same number of loading aids of the same quality.

#### **IV. Delivery deadlines, hindrances to delivery, delays, right to withdraw**

1. Product and service delivery deadlines will only be binding if we have expressly confirmed them. Delivery deadlines relate to departure from the plant; in the case of deliveries free to Customer's premises they relate to the day when the goods are received by the Customer.
2. We shall not be in default of our delivery or service obligation before expiry of a reasonable grace period set for us. If we fall into delay of delivery, then the buyer can request a lump-sum replacement of its delay damage. The lump sum for each completed calendar week of default amounts to 0.5% of the net price (delivery value), but in total not more than 5% of the delivery value of the delayed delivered goods. We reserve the proof that the buyer has incurred no damage or only a much lower damage than the above flat rate. Contract penalties of the customer, which go beyond this regulation are only effective, if they are agreed separately and in writing with us.
3. Cases of force majeure (unforeseen circumstances and events beyond our control, which we could not have avoided with the care of a proper merchant, such as war, danger of war, rebellion, use of force by third parties against persons and property, official interventions, labor disputes in ours or our Suppliers or customers, fires, interruptions of the planned traffic connections as well as raw material and energy shortages), interrupt our delivery obligation for the duration of their duration and extent of their effect, even if we are already in default of delivery. We will inform the buyer without delay and at the same time notify the expected new delivery time. If the service is also not available within the new delivery period, we are entitled to partially or completely withdraw from the contract; We will reimburse immediately any consideration already provided by the buyer. As a case of non-availability of the service in this sense, in particular the non-timely self-delivery by our supplier, if we have concluded a congruent hedging transaction, neither we nor our suppliers are at fault or we are not obliged to procure in individual cases.
4. In cases when obstacles specified in Clause IV p. 3 take effect for longer than three months, the Customer, having granted an additional and appropriate deadline extension, is entitled to withdraw from the contract with regard to its unaccomplished part.
5. If the customer defaults on acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (eg storage costs). For this purpose, we calculate a flat-rate compensation in the amount of 5% of the lost net sales. Further claims for damages remain unaffected. In case of delayed acceptance, the customer may be charged a higher daily rate. Proof of higher damages and our legal claims (in particular compensation for additional expenditure, reasonable compensation, termination) remain unaffected; the lump sum is to be credited to more extensive money claims. The customer is entitled to prove that we have incurred no damage at all or only a significantly lower one than the above flat rate.

#### **V. Prices and payments**

1. Unless otherwise expressly agreed, the prices apply "free house" including normal packaging plus statutory sales tax, duties, customs duties, insurance.
2. If not agreed otherwise with a customer, a customer is obliged to pay an invoice value within 14 days since the date of issuing of an invoice without any deductions and without any deductions resulting from bank fees and charges to one of our bank accounts. The date of crediting of our bank account is deemed as the date of payment.
3. Bills of exchange and cheques are without exception only accepted on account of payment. We are not obliged to accept bills of exchange or cheques.
4. If taxes, duties, dues, fees or other charges of any kind that affect the price of goods are increased or newly introduced between conclusion of the contract and delivery, or if other costs arise or are beyond our control, we are entitled to do so to convert to the agreed purchase price and increase this accordingly. If the increased price is 20% or more above the agreed price, the customer has the right to withdraw from the contract. This right must be asserted immediately after notification of the increased price.
5. If the Customer falls into arrears with payments, interest will be payable at 9 percentage points above the current base rate on the amounts owed to us.
6. A customer may compensate or retain an asset or refuse carrying of a service only in case, when its counter-claim has been acknowledged with a binding court sentence or is indisputable. Compensation or claiming a right to retain an asset or refuse carrying of a service on the grounds of a counter-claim to compensate costs, remove a defect or to compensate the costs of manufacturing based on the same legal relation is feasible at any time, contrary to sentence 1.
7. The assignment of claims against us requires our consent. It 354a HGB remains unaffected.
8. Will be recognized after conclusion of the contract, that our claim on the purchase price is at risk due to the inefficiency of the customer (eg., by application to open insolvency proceedings), we are entitled to refuse performance and, if after a deadline to withdraw from the contract. In contracts for the production of unacceptable goods, we can declare the resignation without prejudice to the statutory provisions on the dispensability of setting deadlines immediately.

#### **VI. Rights and obligations of the Customer in the case of defects**

1. We trade in natural products. Minor natural deviations of the goods in color and content, as well as slight processing-related deviations remain reserved. A delivery of more or less than 5% of the ordered quantity will be retained for a sale on the basis of "approximately". Mussel shells or bones can not always be completely avoided with natural products. In the context of a customer reasonable extent such residues are not a defect.
2. The Customer is under an obligation to inspect goods immediately on delivery. For this purpose he must take samples of at least 1% of the goods. Complaints about defects capable of being discovered on delivery must be made immediately in writing or by e-mail. The period allowed for complaint also applies to incorrect bar coding of goods. Defects which could not be discovered by a proper inspection of the item concerned (latent defects) must be notified to us immediately after their disclosing by e-mail. The contract partner will have no claim for defects if his complaint is submitted too late.
3. The Customer may only assert claims based on the supply of an incorrect quantity if a complaint was made about the incorrect quantity immediately on receipt and a written record is made on the delivery note or another shipping document.
4. In the case of justified complaints about defects submitted in due time the Customer will have the rights specified by law subject to the following:
  - a) In the case of retrospective performance, we will be entitled to choose whether to rectify or to replace. If an attempt to remedy fails, or if we refuse to remedy or if it is unreasonable to expect the Customer to accept the remedy, he will be entitled to assert the other claims specified by law in the case of defects.
  - b) If the quality of the goods differs from the agreed characteristics only to an insignificant extent, the Customer will only be entitled to a reasonable reduction in the price or rectification, at our discretion.

- c) The Customer is entitled to submit claims for damages on the basis of a defect only with additional reservations specified in Clause VII.
- 5. Before goods which have been the subject of complaint are further processed or sold on, we must be given an opportunity to investigate the complaint.
- 6. If the goods were not properly stored, in particular if the constant deep freeze temperature of minus 18° Celsius for deep-frozen goods was interrupted, no guarantee whatsoever will apply.

#### **VII. Liability**

- 1. Our liability for delay in delivery shall be determined in accordance with section IV paragraph 2. Claims for defects are initially based on section VI subsection 4 c.
- 2. Our other liability for damages is limited in accordance with this Section VII.
- 3. Claims for damages due to impossibility, delay, positive breach of contract, culpa in contrahendo and tort are excluded unless we have acted grossly negligent or have breached a material contractual obligation. We are only liable for gross negligence of non-executive employees as well as slight negligence of executives and legal representatives if these violate a material contractual obligation. Proof of the grounds for disclaimer is up to us. As far as we are liable for gross negligence of non-executive employees as well as for slight negligence of executives and legal representatives, our liability is limited to contract-typical, foreseeable damages. In addition, the right to compensation for pure financial losses such as loss of production, reduction of production or loss of profit is limited by the general principles of good faith, for example in cases of disproportion between the amount of the delivery price and the amount of the damage. The extended liability according to § 287 BGB is excluded.
- 4. Where our liability is excluded or limited by the above paragraphs, this will also apply to the liability of our employees and agents.
- 5. Where we have granted the Customer specific rights in the case of defects under the terms of a guarantee of quality, such rights will not be affected by the above limitations of liability.

#### **VIII. Reservation of property rights**

- 1. We reserve the right of property of the goods (hereinafter called reserved property goods) until a complete payment of the price of the goods and all other liabilities resulting from our current trade relationship with the Customer (extended property right). Entering a current account with single payments, balance reporting and account crediting do not affect the reserved property right. In such a case a reserved property right refers to the credited account balance. The reserved property right is not restored for the goods in case when the Customer has, in accordance with the above, already obtained title to the goods, and afterwards subsequent liabilities arose on his account resulting from an ordinary trade relationship.
- 2. In case of breaching of the terms of contract by the customer, in particular in case of delay of payments, we are entitled by law to withdraw from the contract or receive returned goods. Receiving of returned goods or seizure of goods by us shall always be deemed as withdrawal from the contract. After receiving of returned goods we are entitled to cash such products. In accordance with § 367 German Civil Code the profit on cashed goods is, after the deduction of appropriate costs, assigned on the account of the Customer's liabilities.
- 3. Processing or transformation of our goods by the Customer will always be carried out for us as manufacturer as per German Civil Code. If our goods are processed, transformed, inseparably mixed or combined with other items which do not belong to us, we will acquire joint ownership of the new item proportional to the ratio of the value of our goods to the value of the other item processed at the time of processing, transformation, mixing or combination. If the other item must be regarded as the main item, it is hereby agreed that the Customer transfers proportional joint ownership to us. We hereby accept this transfer of joint ownership. The Customer will store our (joint) property for us free of charge. For the rest, the same applies to the product created by processing as to goods supplied by us subject to reservation.
- 4. The Customer is entitled to process and to sell reserved goods in the normal course of business, provided that he does not fall into arrears with payments due to us. This entitlement to process and sell goods will also lapse if there is a substantial deterioration in the Customer's financial position. Pledging or assignment as security are not permitted. The Customer hereby assigns any claims arising out of the selling on of goods (including all current and future account balance claims), insurance claims and claims against third parties for damage, destruction, theft or loss of goods to us as security with immediate effect. We hereby

accept this assignment. If we are only joint owners of reserved goods, this advance assignment is limited to that part of a claim which corresponds to our proportional property in the goods (based on invoice value). If goods are sold on, the Customer must reserve ownership of reserved goods vis-à-vis his customers until the full purchase price has been paid. The Customer will not be entitled to sell goods on to third parties if the claim to the purchase price for that sale is subject to a prohibition of assignment.

5. We authorise the Customer revocably to collect claims assigned to us for his own account and in his own name. This authorisation to collect may be revoked if the Customer fails to meet his payment obligations to us as agreed or if our claims appear to be jeopardised by an inability of the Customer to pay. Our claim will become due for payment immediately when the proceeds of sale are credited to the Customer's account and must be payable by immediate transfer without deduction. The Customer must supply us with the names and addresses of the debtors in assigned claims. No assignment of claims arising out of selling on is permitted unless the assignment is a true factoring assignment, it is notified to us and the factoring proceeds are at least equivalent to the value of our secured claim. The Customer is under an obligation to inform the factor of the assignment and to draw his attention to our property rights. The portion of the factoring proceeds corresponding to our secured claim must be credited to one of our accounts. The Customer hereby assigns to us his claim against the factor to payment acquired in return for the assignment up to the value of our claim which is to be secured. We hereby accept this assignment.
6. In the case of action taken by third parties which affects reserved goods the Customer must draw attention to our property rights and inform us without any delay. If a third party is not able to cover our intervention costs, in particular court fees and non-judicial costs of suit in accordance with § 771 German Civil Code, these will be borne by the Customer.
7. The Customer is under an obligation to take out adequate insurance covering the reserved goods for their true value against the usual risks, e.g. theft, fire, water damage, refrigeration breakdown, and to store them in such a way as to ensure that our property is not jeopardised. The Customer hereby assigns to us any claims against the insurance company which may accrue to him in the event of damage or loss. We hereby accept this assignment.
8. The Customer is entitled to require us to release claims to the extent that the value of our securities exceeds the value of our claims to be secured by more than 10%. The claims to be released shall be selected by us.

#### **IX. Periods of limitation**

1. Customer legal claims regarding faults on delivery lapse within 1 year. Customer legal claims regarding faults specified in § 438 item 1 no. 2 BGB I § 634a item 1 no. 2 BGB remain intact.
2. Other customer claims on breach of obligations resulting from reasons which are on our side, and in particular compensation claims (ex. in case of at fault breach of obligations on our part) or guarantee claims lapse within 12 months. A customers' right to withdraw from a contract due to at fault breach of our obligations, which does not refer to a product defect remains intact. Contrary to sentence 1 there are statutory lapse periods to the following customer claims:
  - a) In accordance with the Civil Responsibility Act for a product and for damages with life hazards, injuries, health deterioration or relevant rights and obligations set in contract relation,
  - b) damages caused by deliberate or gross negligence on our part or a third person on our behalf,
  - c) deliberate passing over of damages,
  - d) compensation for expenditures in accordance with § 478 item 2 BGB
3. Statutory regulations regarding commencing of a lapse period, suspending of a lapse period, suspending and resumption of a lapse period remain intact.
4. Our claims against the Customer will expire by limitation as prescribed by law.

#### **X. Confidentiality, data protection**

1. Insofar as the customer obtains information concerning our company in the context of this contract, in particular all commercial and technical information, whether oral or embodied by documents, he is obliged to treat these as trade secrets and accordingly confidentially. Information is stored and secured in such a way that misuse and unauthorized knowledge are excluded. The organs, employees and vicarious agents of the customer are to be obligated accordingly. The obligation of secrecy does not exist

or ends if and to the extent that the customer proves that the information in question has become generally known without his own negligence, has been lawfully obtained by a third party, must be presented in a judicial procedure or at the time of his Acquisition were already well known.

2. Since it can not be ruled out that employees of the customer come into contact with personal data or with the processing of such data, the customer confirms that all employees who are employed in the execution of this contract, about the data protection and criminal law provisions for data processing and have been committed to data secrecy.
3. The customer acknowledges that we store data from the contractual relationship for the purpose of data processing and reserve the right to transfer the data, as far as necessary for the fulfillment of the contract, to third parties (for example banks, insurance companies). We process personal data according to the BDSG or the DS-GVO insofar as this is necessary to fulfill the contracts concluded with us or to carry out pre-contractual measures or according to another case regulated in Art. 6 para. 1 DS-GVO. If the customer enters into business contact with us, he gives us his consent to the processing of his data. The consent can be revoked at any time with effect for the future.

**X. Brexit, jurisdiction, place of performance, legal venue**

1. We source and deliver goods to or from the UK. In the event that the BREXIT comes to supply or trade restrictions and / or significant price changes, we are - as far as reasonable for the customer - entitled to amend or terminate current contracts and / or to negotiate with the customer on the contract adjustment
2. This contract is exclusively subject to German law. The use of United Nations Convention on Contracts for the International Sale of Goods (SCISG) is excluded.
3. The place of performance is Bremen, including payments by the Customer, unless we have expressly agreed otherwise with the Customer.
4. If the Customer is a merchant, public law legal person, or a separate public-private property, the exclusive appropriate legal venue for both parties for all disputes arising directly or indirectly out of the contractual relationship, with the reservation of the case set in Clause X. p. 4, will be Bremen. The above applies also in case when the Customer has no appropriate general court on German territory, or after the conclusion of the contract moves its place of residence or ordinary place of presence abroad, or its place of residence or ordinary place of presence are not known at the moment of submission of the claim. We reserve, however, the right of submitting a claim in the Customer appropriate general court.
5. All disputes that might arise from quality issues shall be resolved by the arbitration court named "Bremer freundschaftliche Arbitrage" in accordance with the regulations of the Bremen Chamber of Commerce in their current version. A copy of the regulations of the arbitration court is made available to customers on request. This refers also to other cases or far - reaching litigations resulting from contract relations. Public court proceedings are available for such cases in accordance with p. X 3.