

General Terms and Conditions of Sale and Delivery of  
FlevoTrade Dronten B.V.

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General Terms and Conditions of Sale and Delivery of FlevoTrade Dronten B.V., with its registered office at Staalwijk 15-17, 8251 JP Dronten, the Netherlands, registered with the Chamber of Commerce of Lelystad under number 39091129.

**Article 1. General**

- 1.1 These Terms and Conditions apply to all offers made and agreements entered into by FlevoTrade Dronten B.V. (hereinafter "FlevoTrade") and to the performance thereof.
- 1.2 Deviating conditions, including in the form of conditions declared applicable by the buyer, are hereby expressly rejected, and may apply only to the extent that they have been expressly confirmed in writing to the buyer by FlevoTrade in respect of every new agreement.
- 1.3 Where these General Terms and Conditions have also been drawn up in a language other than Dutch, the Dutch text shall always prevail in the event of discrepancies.

**Article 2. Offers and conclusion of agreement**

- 2.1 All offers, tenders and other information issued by FlevoTrade shall be non-binding and subject to price changes, unless otherwise stated. All our sales agreements are deemed to have been concluded in the city where Flevo Trade has its registered office.
- 2.2 An agreement will not be considered concluded until FlevoTrade has confirmed in writing the written order placed by the buyer. FlevoTrade shall specify the following in the written confirmation: product, variety (where applicable), sorting, price, packaging, delivery condition, delivery period, payment terms and any other matters agreed upon such as transport, storage and treatments.
- 2.3 FlevoTrade shall not be bound to perform an agreement at listed prices and/or terms when these are clearly the result of a misprint and/or a writing error.
- 2.4 If it transpires upon placing an order by the buyer that FlevoTrade is unable to perform the non-binding offer, FlevoTrade may refuse the order and revoke the offer immediately after acceptance by the buyer, without the buyer being entitled to compensation or replacement.

**Article 3. Prices**

- 3.1 Prices and rates are in Euros and are exclusive of packaging and transportation costs, costs of additional treatments, storage costs, costs of quality inspection and phytosanitary testing, and any taxes and other fees and charges, and excluding VAT, unless otherwise indicated.
- 3.2 FlevoTrade shall not be liable for customs duties or other local taxes or import duties or taxes that may be applicable in the country of the buyer.
- 3.3 The price specified is based on the purchase price and other cost factors known at the time of conclusion of the agreement. If any of these cost components is increased due to unforeseen circumstances after conclusion of the agreement but prior to delivery, FlevoTrade shall have the right to pass on said increases in all fairness.

#### **Article 4. Delivery**

- 4.1 Non-maritime delivery shall take place on the basis of "Free Carrier" (FCA, Incoterms), unless otherwise agreed in writing. Maritime delivery shall take place on the basis of "Free on Board" (FOB, Incoterms), "Free Alongside Ship" (FAS, Incoterms) or "Cost, Insurance and Freight" (CIF, Incoterms), unless otherwise agreed in writing.
- 4.2 The specified delivery times shall always be considered approximations and will never be regarded as deadlines. FlevoTrade shall not be considered in default in respect of the delivery time until it has been notified to this effect in writing by the buyer, the buyer has afforded FlevoTrade the opportunity to effect delivery within a reasonable period and FlevoTrade has failed to comply.
- 4.3 The delivery period shall commence once FlevoTrade has confirmed the order in writing or has started performance of the agreement, unless otherwise agreed upon.
- 4.4 FlevoTrade shall not be liable for damage due to late delivery, if and insofar as such late delivery is attributable to circumstances not for the account and risk of FlevoTrade, including non-performance or late delivery by suppliers of FlevoTrade.
- 4.5 After delivery, the goods are transported at the risk of the buyer. Quality deterioration due to and during transport shall be for the account and risk of the buyer. Damages and costs resulting from delay in the transport or blocking of the goods and/or containers, such as demurrage, shall always be at the expense and risk of the buyer
- 4.6 The buyer is obliged to receive the goods immediately or no later than within 24 hours of their being made available or their arrival at the delivery location. The risk for the goods is transferred to the buyer from the time the goods are available for delivery on the date communicated to the buyer. In the event of late receipt or failure to receive the goods at the location and on the date communicated to the buyer, the buyer shall be in default without any notification being required. The goods shall be stored at the buyer's expense and risk. If the buyer, following a summons from FlevoTrade, fails to collect the goods within 24 hours, FlevoTrade shall have the right to sell or cause to sell the goods to a third party. The buyer remains liable for the sale price, plus interest and expenses and, where appropriate, minus the net proceeds of the sale to the third party.

#### **Article 5. Payment**

- 5.1 Payment must be made within 14 days of the invoice date unless otherwise agreed, in the agreed currency, either in cash or by funds transfer to a bank account to be specified by FlevoTrade, without any deduction or settlement.
- 5.2 If the offer and invoice are not in Euros, FlevoTrade shall have the right to pass on the cost of exchange rate fluctuations to the buyer up to the time the agreement is concluded.
- 5.3 In the event an order is performed in instalments, FlevoTrade shall be entitled to require payment for each partial delivery prior to performing the subsequent partial deliveries.
- 5.4 In case the buyer exceeds the payment term, the buyer shall be in default by operation of law and FlevoTrade shall be entitled to charge a monthly interest of 1.25% starting on the due date, without prejudice to the right of FlevoTrade to claim compensation. Furthermore, all costs of collection incurred shall be borne by the buyer. This applies to both judicial and extrajudicial costs, the latter of which shall be at least 15% of the amount to be collected, with a minimum of EUR 250.

- 5.5 In the event of late payment by the buyer, FlevoTrade shall be authorised to suspend every further delivery to the buyer until the buyer has paid all invoices, plus costs and interest. In the event of damage, refusal to receive or other possible disputes, the buyer shall remain obliged to pay the invoice.
- 5.6 FlevoTrade shall be entitled upon entering into the agreement or thereafter, prior to (further) performance, to demand security from the buyer for both payment obligations and other obligations under this agreement. If such security is not provided within the specified term, or is not satisfactory in the opinion of FlevoTrade, or the buyer refuses to provide the required security, FlevoTrade shall have the right to suspend its obligations and ultimately to dissolve the agreement either wholly or in part, without notice of default or judicial intervention, without prejudice to FlevoTrade's right to claim compensation for any damage it has suffered. In that case, FlevoTrade shall not be liable in any manner for any damage to the buyer that may result from such suspension or (partial) dissolution.

#### **Article 6. Retention of title**

- 6.1 Ownership of goods delivered by FlevoTrade shall not be transferred to the buyer until full payment of all amounts invoiced by FlevoTrade has been received along with any interest, penalties and costs as well as payment of all claims pertaining to the buyer's failure to fulfil its obligations under this or other agreements.
- 6.2 FlevoTrade shall be entitled to recover the goods, or have them recovered, from the buyer or a third party that is holding the goods for the buyer, if the buyer remains in default of its payment obligations in any way or if there is reasonable fear that it will fail to perform these obligations. In that case, the buyer shall be obliged to grant FlevoTrade or a party authorised by FlevoTrade access to its premises and buildings for that purpose.
- 6.3 The buyer, or a third party that is holding the goods for the buyer, must keep the goods under retention of title separate from other goods, in order to be able to distinguish FlevoTrade's goods at all times.
- 6.4 As long as the delivered goods remain under retention of title, the buyer may not, apart from normal business operations, alienate, encumber, pledge, or otherwise allow these goods to come under the power of third parties. However, the buyer is not permitted to alienate the goods as part of its normal business operations once the buyer has applied for a suspension of payments or has been declared bankrupt.
- 6.5 If third parties intend to establish or exercise any right to the goods delivered under retention of title, the buyer shall be obliged to inform FlevoTrade thereof as soon as may reasonably be expected.

#### **Article 7. Guarantee**

- 7.1 The goods delivered by FlevoTrade are healthy, of good appearance, of good quality, virtually free of external and internal defects, frost damage and rot, and meet all the other requirements stated in the written sales agreement.
- 7.2 Unless otherwise agreed, FlevoTrade offers no additional guarantees in respect of quality.

## **Article 8. Complaints**

- 8.1 The buyer is obliged to inspect the goods upon delivery for visible and/or directly observable defects. Failure to observe the obligation to inspect means that the buyer loses any rights to submit claims against FlevoTrade.
- 8.2 The buyer has the right to inspect the goods at the place of loading before shipping. If the buyer has reason to refuse delivery of the goods, FlevoTrade shall under no circumstance be obliged to provide a replacement delivery and/or compensation.
- 8.3 Complaints in respect of the delivered goods must be submitted in writing, immediately but not later than 12 hours after delivery on pain of forfeiture of rights. The complaint shall contain a description of the defect and FlevoTrade must be given the opportunity to investigate the complaint, or have it investigated, on first request.
- 8.4 The buyer shall allow FlevoTrade to have the relevant goods inspected by an expert or independent inspection authority to determine, among other things, that the goods delivered by FlevoTrade are the same as those rejected by the buyer. If the expert declares the buyer's rejection of the goods to be justified, the costs of the inspection shall be borne by FlevoTrade. If the expert declares the rejection unjustified, the costs shall be borne by the buyer. The assessment of the expert is not binding unless agreed upon in writing in advance by the parties.
- 8.5 Complaints are only valid in respect of goods that are still in the buyer's possession and in the condition in which they were delivered.
- 8.6 If the buyer, in the event of a maritime delivery, observes defects and/or damage during unloading at the port of destination, the buyer must always report this immediately to a sworn Lloyd's quality inspector there, who will then draw up a report. In connection with the policy conditions of the seller's insurers, the buyer must also, on forfeiture of all rights, ensure that the goods delivered are cleared and released by customs as soon as possible but no later than within six days after the goods delivered have been unloaded at the port of destination, and the buyer must inspect the goods delivered for defects within 24 hours after the goods delivered have been released by customs, and submit any complaints regarding defects of the goods delivered within the same period. Such complaints must be submitted by email to the seller stating the container number, order number, the nature of the defect/defects observed, including clear pictures - with date stamp - of the defect observed. In the complaint, the buyer shall specify the percentage that does not meet the agreed quality, broken down by type of deviation from agreed quality requirements.
- 8.7 If the delivered goods differ by less than 10% in number, quantity and weight from what was agreed, the buyer shall nevertheless be obliged to fully accept the shipment at a proportional adjustment of the invoice. The above cannot be grounds for a complaint or a right to refuse delivery.
- 8.8 Complaints in respect of a part of the delivery may not be a reason for the buyer to reject the entire delivery.
- 8.9 If the buyer submits a complaint with FlevoTrade in a timely manner and FlevoTrade acknowledges the complaint as valid, FlevoTrade, at its discretion, shall be exclusively obliged to either a (partial) replacement delivery, a refund of a proportional amount of the purchase price, or payment of the price difference if FlevoTrade indicates that the goods should be sold on site at a lower price. The buyer shall not be entitled to compensation unless the damage suffered by FlevoTrade is attributable to intent or deliberate recklessness.
- 8.10 Submitting a complaint shall not suspend the payment obligation of the buyer unless FlevoTrade expressly consents to such a suspension.

8.11 Returns of delivered goods shall never be allowed without the prior consent of FlevoTrade.

#### **Article 9. Liability**

- 9.1 Except in the event of legal liability by virtue of mandatory statutory provisions, and in the case of intent or deliberate recklessness, any liability on the part of FlevoTrade for damage suffered by the buyer or other party is expressly excluded and in any case limited to a maximum equal to the invoice amount for the delivered goods or the part of the invoice amount directly or indirectly relating to the compensation, including in the case of intent or deliberate recklessness. The liability of FlevoTrade shall at all times be limited to a maximum equal to the invoice amount for the delivered goods or the part of the invoice amount directly or indirectly relating to the compensation.
- 9.2 The buyer shall indemnify FlevoTrade against claims of third parties for compensation of damage for which FlevoTrade is not liable under these Terms and Conditions.
- 9.3 All limitations of liability and indemnifications stipulated by FlevoTrade shall also apply to its subordinates and contracted auxiliaries.
- 9.4 In the event of damage, the buyer is obliged as a prudent debtor to arrange for preservation of the goods and to keep the damage to a minimum, to the extent possible, in order to prevent further deterioration.
- 9.5 The right of the buyer to claim compensation from FlevoTrade shall lapse after expiry of a period of one year after delivery of the goods.

#### **Article 10. Force majeure**

- 10.1 In the event of force majeure, FlevoTrade shall have the right, at its discretion, without legal intervention and without any obligation to pay compensation, by mere written notice, either to suspend performance of this agreement for the duration of the force majeure or if necessitated by the duration and seriousness of the situation of force majeure (such to be assessed exclusively by FlevoTrade), to dissolve the agreement, wholly or in part.
- 10.2 Force majeure shall be held to mean: any circumstance independent of the will of FlevoTrade that makes the performance of the agreement temporarily or permanently impossible or so difficult that performance cannot be reasonably demanded of FlevoTrade, including but not limited to transport difficulties, the absence of sea transport, fire, weather, crop failure, strikes or labour interruptions, international conflicts, violent or armed actions, decisions and measures by and between central and local authorities, import, export, and/or trade embargoes, breakdown of (cooling) facilities used by FlevoTrade, fungus, (internal) decay, viruses and other alterations in quality of the goods traded by FlevoTrade and the failure of suppliers and/or third parties to comply with their obligations to FlevoTrade.
- 10.3 If FlevoTrade has already performed part of the agreement at the time the force majeure arises, FlevoTrade shall be entitled to separately invoice the goods already delivered and/or deliverable goods and the buyer shall pay the sale price of the delivered goods as if under a separate contract.

**Article 11. Cancellation**

- 11.1 If the buyer cancels the agreement entirely or in part, regardless of reason, the buyer must pay compensation equal to at least 25% of the invoice amount of the cancelled goods. In that case, FlevoTrade shall also be entitled to invoice the buyer for all costs incurred to date.
- 11.2 If the cancelled order can be sold elsewhere, Article 11.1 does not apply, on the understanding that the buyer is liable for any price difference as well as for all other resultant costs incurred by FlevoTrade, including storage costs.

**Article 12. Suspension and dissolution**

- 12.1 If the buyer fails to comply with its obligations under the concluded agreement fully, properly or on time, or if there is reasonable fear that the buyer will fail to meet these obligations, or in the event of bankruptcy or suspension of payments on the part of the buyer, or in the event of closing down, sale or liquidation of the buyer's business, FlevoTrade shall be entitled to suspend performance of the agreement within a reasonable period, or to dissolve the agreement without FlevoTrade being obliged to pay compensation.
- 12.2 The claim of FlevoTrade in respect of the part of the agreement already performed, as well as damage arising from the suspension or dissolution of the agreement, including loss of profit, shall be immediately due and payable.

**Article 13. Applicable law/disputes**

- 13.1 All agreements entered into by FlevoTrade and any legal relationship between seller and buyer, as well as obligations arising therefrom, shall be governed exclusively by the laws of the Netherlands.
- 13.2 All disputes shall be settled exclusively by the competent court within whose jurisdiction FlevoTrade has its place of business. However, FlevoTrade reserves the right to apply to another competent court or submit the dispute to arbitration.
- 13.3 The Dutch text of these Terms and Conditions shall prevail over translations in other languages.

These General Terms and Conditions of Sale and Delivery have been filed with the Chamber of Commerce of Lelystad under no. 39091129.