

Terms and Conditions of Sale (export orders) of Borgwaldt Flavor GmbH

January 2014

1. Preamble

Agreements between us and yourself shall be exclusively concluded on the following terms and conditions. Acceptance of an order will not imply acceptance of different contract purchase conditions.

2. Conclusion of contract

2.1 Any agreements between us must be in writing in order to be effective.

2.2 Our confirmation of order must be issued in writing. If it contains minor modifications or additions compared to your order, you will be deemed to be in agreement therewith unless you object in writing within three business days of receipt.

2.3 Information contained in catalogues, circulars, price lists, etc only becomes part of the contract if we expressly refer to it in writing.

2.4 We have the right to withdraw from the contract exempt from any charges if the required export permits or export insurances cannot be obtained or cannot be obtained within a reasonable time.

2.5 You assure us that, prior to conclusion of the contract, you have informed us of any and all statutory, official or other requirements which are mandatory for implementation of the contract in your home country.

3. Intellectual property

3.1 Plans, recipes, samples, cost estimates, product specifications and other documents will remain our property. They shall be used only to the extent permitted by ourselves and must not be modified, reproduced or made available to third parties.

3.2 Where contract items or parts thereof are protected by industrial property rights or copyrights, we shall grant you a non-exclusive and non-transferable right to use the same within your company in conformity with the contract. Otherwise, the rights of use will remain with us and/or the manufacturer. Reproductions or adaptations will require our prior consent in writing.

3.3 Business or brand names and other identifying marks on the contract items supplied by us must not be removed or modified.

3.4 The contract items may not in any way be analysed to determine their composition and/or mixture ratio.

4. Delivery date

4.1 An agreed delivery period will begin as soon as the contract has been concluded, all official formalities have been completed, all the technical information required to process the order is available, agreed prepayments have been made, and agreed security for payment has been provided. The delivery period shall be deemed met if you receive advice from us within that period that we are ready to ship.

4.2 Compliance with the delivery period will be dependent on performance of your contractual obligations, in particular compliance with the terms of payment.

If modifications to the contract items are agreed at your request after the contract has been concluded, the delivery period may be extended accordingly.

4.3 In the event of delay in delivery you will have the right to withdraw from the contract only if we are solely responsible for such delay, if the delay in delivery exceeds the period of three months and if you grant us a reasonable grace period and expressly state at the same time that you refuse to accept performance of the contract after expiry of that period, and if we do not then effect performance within the grace period set.

4.4 If the delay in delivery in full or in part is our fault, you may demand liquidated damages for the damage demonstrably suffered by you as a result of delayed performance. For each full week of delay these will be 0.2%, up to a maximum of 5%, of the value of that part of the total delivery which cannot be used on time or in conformity with the contract as a result of the delay. There will be no entitlement to liquidated damages for the first two weeks of delay.

No further claims for compensation will be allowed on the basis of a delay for which we are responsible, subject to Clause 7.2.

5. Passage of risk

5.1 Unless otherwise agreed in the contract the delivery terms will be FCA works of Borgwaldt Flavor GmbH, Hamburg (in conformity with the latest version of Incoterms).

Part deliveries will be allowable.

If partial deliveries are carried out, or if we wholly or partly assume responsibility for or arrange other services, e.g. transport costs and insurance, as per your order, the risk of each partial delivery shall pass to you in accordance with the agreed Incoterms clause. From this point on, you are therefore obliged to insure the contract value of each delivery or partial delivery against all risks until we have received full payment of the value of the contract. We reserve the right to request from you appropriate evidence of this insurance.

Packing shall be provided in accordance with the contractually agreed shipment method. Unless agreed otherwise in writing by contract, packaging is not returnable.

5.2 If you do not immediately accept the delivery on the agreed delivery date after we have notified you of our readiness to ship, we will be entitled to store and insure the contract items at your risk and expense. You will bear any costs incurred through the delay in acceptance. Non-acceptance of the delivery will not exempt you from your obligation to pay the purchase price. After expiry of a reasonable time set by us, we will, in this event, also be entitled to otherwise dispose of the contract items concerned and then to resupply you within a reasonable period.

5.3 Delivered contract items are to be received by you, notwithstanding the rights referred to in Clause 6. This will not apply if these contract items obviously have significant defects.

5.4 If delivery in full or in part finally becomes impossible for

us prior to the passage of risk, you will have the right to rescind the contract. If such impossibility occurs during the delay in your acceptance, or is your fault, you will still be bound by your contractual obligations.

6. Warranty

We warrant the merchantable quality of the delivered contract items, including any features promised, to the exclusion of further claims, subject to Clause 7.2 as follows:

6.1 We warrant that the material and design are free from defects.

6.2 Unless agreed otherwise in writing by contract, the warranty period is subject to the respective product specifications and begins to run with the notice of our readiness to ship.

6.3 We will correct defects which occur and are reported to us in writing within the warranty period free of charge by making replacement deliveries (on DAP basis in conformity with the latest version of Incoterms).

6.4 The following circumstances will not be covered by our warranty:

6.4.1 if you fail to notify us of the defect immediately in writing or fail to provide us with reasonable assistance to enable us to correct the defect, or

6.4.2 where defects have been caused after the passage of risk due to improper transportation or improper and/or unsuitable storage of the contract items, or

6.4.3 if, without our consent, modifications are made to the contract items, or

6.4.4 if the defects are not demonstrably in the material or design, or

6.4.5 if the defects are due to fluctuations in characteristics, appearance, or quality attributable to the nature of the contract items.

6.5 If at any time you default on performance of your contractual obligations towards us, we will be entitled to refuse to honour warranty claims. The warranty period stipulated under Clause 6.2 will not be extended for this reason.

6.6 If, despite a reasonable time limit and an additional extension if necessary, we culpably fail to meet our obligation to rectify a defect in accordance with Clause 6.3, or if, in the event of a defective delivery, the replacement delivery of the contract items proves impossible or economically not viable, or if repeated attempts to do so should ultimately fail, you will have the right to cancel the contract only where agreement is not reached on a reasonable reduction in the purchase price.

6.7 If the contract is cancelled, all further claims will be excluded, subject to Clause 7.

6.8 If the contract items cannot be used in conformity with the contract and we are at fault through having given the wrong advice or having failed to fulfil our secondary obligations, the provisions of this Clause 6 will apply accordingly.

7. Limitation of liability

7.1 Subject to binding statutory requirements, we shall be liable for personal injury and damage to property in so far as damages are paid by our liability insurer within the limits of the sums insured and the terms of our insurance policy.

We shall supply you with evidence of the extent of our liability insurance on request.

7.2 You will not be entitled to make claims other than those referred to in Clauses 4, 5.4, 6 and 7.1, except in cases of willful intent or gross negligence on the part of our company management or one of our senior staff. In the event of gross negligence on the part of our senior staff, our liability will be restricted to a maximum of 10% of the delivery value.

In particular, you will have no claims for compensation for

indirect or consequential damage not caused to the contract items themselves (e.g. loss of production or loss of profit).

8. Prices

8.1 Our prices will apply to delivery packed FCA our works in Hamburg. In the event of deliveries within the Federal Republic of Germany value added tax shall be charged at the prevailing statutory rate. This will also apply to agreed advance payments.

8.2 If, in exceptional circumstances, the agreed price should be in a foreign currency and the exchange rate should alter, we reserve the right to adjust the price up to the time we receive the purchase price.

8.3 If a price is not agreed for a delivery, we shall invoice you at our price as valid on the date of delivery.

8.4 Modifications to the contract items which are to be undertaken at your request by us following conclusion of the contract shall only be binding on us upon prior written agreement. You will bear all the costs incurred thereby.

8.5 If you withdraw from the contract prior to delivery, our claim for damages shall be determined in accordance with Section 377 of the Swiss Law of Obligations using the deduction method, i.e. the agreed purchase price shall be reduced by expenditures saved by us.

8.6 The cost incurred in payment transactions will be borne by each Party.

8.7 Costs which we incur due to late return of bank guarantee/surety documents will be reimbursed by yourselves.

8.8 Any additional costs incurred at home and abroad which are not covered by the agreed Incoterms clause (in conformity with the latest version of Incoterms), such as consulate and certification fees incurred in connection with the delivery are to be borne by you. The same applies to taxes accrued outside the Federal Republic of Germany.

9. Terms of payment

9.1 The purchase price and additional costs, e.g. for freight, are payable to us without deduction within eight days of the invoice date, unless otherwise agreed in writing. Any payments, including those involving bills of exchange, will be deemed to have been effected when we can dispose of the payments without reservation.

9.2 You will have the right to withhold payment or to set payments off against counterclaims only as far as your counterclaims are undisputed or upheld in a non-appealable judgment.

9.3 If you are in default vis-à-vis ourselves, we will be entitled to defer performance of our own contractual obligations until we have received the overdue payments; in particular, we will be entitled to retain all or part of the contract items.

9.4 We will charge interest at five percent points per annum above the prevailing European Central Bank base rate for failure to observe agreed payment dates.

9.5 If you default on due payments and fail to make payment even after a grace period has been set, or if you are otherwise in serious breach of contract, we shall be entitled to rescind the contract and demand compensation.

10. Retention of title

10.1 Any delivered contract items will remain our property until the purchase price and additional costs have been paid in full ("Secured Goods").

10.2 While the contract items are subject to retention of title, you must not sell or pledge them, nor must you transfer ownership for surety or other purposes or otherwise dispose of them to third parties.

You will assist us in measures to safeguard and, where

appropriate, assert our right to retention of title. You will inform us immediately if third parties assert rights to the Secured Goods or dispose of them.

10.3 You may process and/or mix the Secured Goods in the ordinary course of business. If you process the Secured Goods or mix them with other items, we acquire co-title to the new item in the ratio of the value of the Secured Goods compared to the value of the newly created item. If and as far as the value of the security interest to which we are entitled against you exceeds the secured claim by more than 10%, we are obligated at your request to release securities of our choice.

10.4 The transfer of title will not affect the passage of risk provisions in Clause 5.

11. Force majeure

11.1 Either Party will be entitled to refuse to fulfil its contractual obligations where and for as long as this is prevented or is not economically viable as a result of the following circumstances: strikes, lockouts, and other circumstances beyond the Parties' control such as natural disasters, fire, earthquake, war (declared or undeclared), terroristic or political acts of force, contagious diseases, epidemics, mobilisation, revolt, seizure, distraint, embargo, energy supply restrictions, concrete travel warnings of the competent authorities, i.e. of the Department of Foreign Affairs, to leave countries or regions at the respective place of destination or not to enter these, and faults and delays among sub-suppliers for one of these reasons.

11.2 A circumstance referred to in this Clause and occurring prior to conclusion of the contract will entitle either Party to

refuse to perform the contract only if the circumstance has proven repercussions for performance which were not foreseeable at the time the contract was concluded.

11.3 The Party wishing to invoke force majeure will inform the other Party immediately of the start and end of such circumstances.

11.4 Each Party will have the right to withdraw from the contract in writing if performance of the contract is prevented for more than six months as a result of force majeure under this Clause.

12. Court of arbitration, applicable law

12.1 Any disputes arising out of and in connection with our contractual relationship shall be finally settled under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The arbitration language shall be English.

The court of arbitration will be in Zurich, Switzerland.

12.2 The contract will be subject to Swiss law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Borgwaldt Flavor GmbH

