General Conditions of Sale of SAVANNA Ingredients GmbH & Co. KG (09/2021)

1. Definitions

"GCS" are these General Terms and Conditions of Sale of SAVANNA Ingredients GmbH & Co. KG (hereinafter: the “Company”).

"Buyers" are the business partners who purchase Contract Products from Company.

"Contract Products" are the movable goods to be supplied or sold by Company.

2. General, scope of application

a. These GCS apply exclusively to all business relations between Company and the Buyers; any terms and conditions of the Buyers which conflict with or deviate from these GCS shall not be applicable unless Company has expressly agreed to their validity in writing. These GCS shall also apply if Company carries out the delivery without reservation in the knowledge of terms and conditions of the Buyer which conflict with or deviate from these GCS.

b. The GCS apply in particular to contracts for the sale and/or delivery of movable goods ("Contract Products"), regardless of whether Company manufactures the Contract Products itself or purchases them from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the GCS in the version that is in force at the time of the Buyer's order or at least in the version last provided to the Buyer in text form shall also apply as a framework agreement for similar future contracts without Company having to refer to them again in each individual case.

c. Individual agreements made in individual cases with the Buyer (including side agreements, supplements and amendments) shall in any case prevail over these GCS. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or written confirmation of Company.

d. Legally relevant declarations and notifications to Company after conclusion of the contract (e.g. setting of deadlines, reminders, declaration of withdrawal) must be made in writing.

e. References to statutory law only have clarifying significance. In any case, the statutory law applies unless directly amended or expressly excluded in these GCS.

3. Conclusion of contract and offers

a. Offers made by Company shall be subject to change and non-binding and subject to prior sale of the offered products, unless expressly marked as binding.

b. Any order of goods by the Buyer shall be deemed a binding contractual offer. Unless otherwise stated in the order, Company shall be entitled to accept this contractual offer within two (2) weeks after its receipt.

c. Any documents (data, samples, or the like) supplied by the Buyer shall be binding; the Buyer shall be liable for their content, technical feasibility and completeness; Company shall not be obliged to carry out a verification thereof.

4. Delivery time and delay in delivery

a. Unless expressly agreed otherwise, any information on the delivery date is only an approximate estimate. A delivery period shall not commence before all details of the performance have been clarified and before both parties have agreed on the terms of the order. Agreed delivery dates will be postponed accordingly.

b. If Company is unable to deliver on time, due to force majeure, labour disputes for which Company is not responsible, governmental actions, shortage of energy or raw materials, epidemics or pandemics, transport shortages or obstacles, operational impediments e.g. due to fire, water and/or machine damage or other disruptions in the course of operations of Company or its suppliers/subcontractors for which Company is not responsible and which are provably of significance, Company shall inform the Buyer thereof without delay. In such cases, Company shall be entitled to postpone the delivery date by the time of the duration of the event of force majeure or disruption, provided that the Buyer has been informed accordingly. If delivery becomes impossible as a result thereof, the obligation to deliver shall lapse and no damages shall be awarded. If the Buyer proves that subsequent performance resulting from the delay is of no interest to him, he may withdraw from the contract under exclusion of further claims. If the event of force majeure or disruption lasts longer than one month, Company may withdraw from the contract with respect to the unfulfilled part if it has fulfilled the above information obligation and insofar as it has not agreed to the procurement risk or a delivery guarantee.

c. Clause 4.b) shall apply accordingly insofar as Company has concluded a corresponding purchase transaction prior to conclusion of the sales contract with the Buyer which would have enabled Company to fulfil its contractual delivery obligations towards the Buyer if that corresponding purchase transaction would have been executed properly, and if Company was not supplied, not supplied correctly and/or not supplied on time by its supplier and if Company is not responsible for this.

d. If Company is in delay in performance, the Buyer shall be entitled to set a reasonable grace period in writing and to withdraw from the contract after its fruitless expiry. The setting of a grace period is not necessary if Company seriously and finally refuses performance or if the underlying contract is a firm deal (Fixgeschäft) within the meaning of § 323 para. 2 no. 2 BGB or § 376 HGB (German Commercial Code) or if special circumstances exist which justify immediate withdrawal from the contract after considering the interests of both parties.

e. Company shall only be liable for damages in accordance with section no. 9 of these GCS. The statutory provisions shall apply to withdrawal. Furthermore, the statutory rights of Company shall remain unaffected, in particular in the event of exclusion of the obligation to perform (e.g. due to impossibility or unreasonability of performance and/or subsequent performance).

5. Performance, delivery, passing of risk, default of acceptance, packaging and labeling

a. Unless expressly agreed otherwise in writing, deliveries will be made EXW D-50189 Elsdorf, Germany (Incoterms). Delivery shall be ex warehouse. The place of performance of the delivery and of any subsequent performance shall also be there. Seller will be responsible for packing Product on a suitable loading equipment. At the Buyer's request and expense, the Contract Products shall be shipped to another destination (Versendungskauf). Unless otherwise specified, Company shall be entitled to determine the type of shipment (in particular the transport company, shipping route, packaging).

b. Company shall be entitled to make partial deliveries insofar as this is reasonable for the Buyer under consideration of his interests.

c. The risk of accidental loss and accidental deterioration of the Contract Products shall pass to the Buyer when Company makes packed Contract Products available for collection, but not before the agreed collection dateat the time of delivery at the latest. If shipment (Versendungskauf) has been agreed, the risk of accidental loss and accidental deterioration of the Contract Products shall pass to the Buyer upon handover to the carrier, freight forwarder or any other person or institution designated to carry out the shipment. This shall also apply if Company has covered the transport costs or if Company has advanced such costs for the Buyer or if partial deliveries are made. If shipment or delivery is delayed for reasons for which the Buyer is responsible, the risk shall pass to the Buyer from the day on which the contractual products are ready for shipment and on which the Buyer has been notified thereof.

d. If the Buyer is in default of acceptance or if the delivery is delayed for reasons for which the Buyer is responsible, Company shall be entitled to demand compensation for the resulting damage including additional expenses. In this case, the Contract Products shall be stored at the Buyer's risk and the Buyer shall be charged for storage.

e. If one of the international trade clauses "Incoterms" developed by the International Chamber of Commerce (ICC) has been agreed for the respective contract, the respective current version of these “Incoterm” shall apply. “Incoterms” shall apply only to the extent that they do not conflict with these GCS and any other agreements made.

f. Buyer will use original transportation packaging only for its internal purposes. Should Buyer wish to distribute, sell or pass Contract Products on to third parties, Buyer will be solely responsible for labeling any and all sales packaging in accordance with applicable laws and regulations. Buyer guarantees that such labels will name Buyer as importer, distributor and / or seller of Contract Products and that such labels will not include Company’s name(s), logos and / or trademarks. Buyer guarantees, at its sole expense, to remove Company‘s labels from any and all sales packaging.

6. Prices and terms of payment

a. Unless otherwise agreed, the current prices of Company at the time of conclusion of the contract and the Incoterm Ex Works shall apply. The statutory value added tax is not included in the prices; such tax is listed separately in the invoice at the statutory rate on the day of invoicing. The Buyer shall bear any further costs and charges (incl. any charges for packaging licensing).

b. In the case of sales shipment (Clause 5.a) of the GCS), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

c. The purchase price is due without any deduction and must be paid within 14 days of invoicing and receipt of the invoice.

d. The Buyer shall be in payment default upon expiry of the above payment period. During the period of payment default, the purchase price shall bear interest at the statutory default interest rate applicable at the time. Company reserves the right to claim further damages for delay. The claim to the commercial maturity interest (§ 353 HGB) remains unaffected.

e. The Buyer shall only be entitled to set-off and retention rights to the extent that his claim is legally established or undisputed. In the event of defects in the delivery, the Buyer's counterclaims under the same contract, in particular under section 8 of these GCS, shall remain unaffected.

7. Retention of title

a. Until full payment of all present and future claims arising from the purchase contract and the ongoing business relationship (Secured Claims) has been made, Company reserves ownership of the Contract Products.

b. The Contract Products subject to retention of title may neither be pledged nor transferred by way of security to third parties until the Secured Claims have been fully paid. The Buyer shall immediately notify Company in writing if a petition for the opening of insolvency proceedings is filed or if third parties seize the goods belonging to Company (e.g. distraints).

c. In the event of breach of contract by the Buyer, in particular non-payment of the due purchase price, Company shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Contractual Products on the basis of retention of title. The demand for the return of the goods does not at the same time include the declaration of withdrawal; Company is rather entitled to demand the return only of the Contract Products and to reserve the right to withdraw from the contract. If the Buyer does not pay the due purchase price, Company may only assert these rights if it has previously unsuccessfully set a reasonable deadline for payment to the Buyer or if such setting of a deadline is dispensable under the statutory law.

d. Until revocation pursuant to para. iii) of this Clause 7.d), the Buyer shall be entitled to resell and/or process the Contract Products subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply additionally.

i. The retention of title extends to the full value of the products resulting from the processing, mixing or combining of the Contract Products of Company, in which case Company shall be deemed the manufacturer. If the ownership rights of third parties remain in force during processing, mixing or combination with goods of third parties, Company shall acquire co-ownership in the ratio of the respective invoice values of the processed, mixed or combined Contract Products. Apart from that, the provisions that apply to the Contractual Products delivered under retention of title shall mutatis mutandis apply to the products resulting from the processing, mixing or combining of the Contract Products.

ii. Any claims against third parties arising from the resale of the Contract Products or the manufactured product shall already now be assigned by the Buyer to Company as security in total or in the amount of the possible co-ownership share of Company in accordance with the preceding paragraph. Company hereby accepts such assignment. The obligations of the Buyer as described in Section 7.2 shall also apply with regard to the assigned claims.

iii. The Buyer shall remain authorized to enforce the assigned claims alongside Company. Company undertakes not to demand payment of the claims as long as the Buyer meets his payment obligations towards Company, there is no lack of ability to perform and Company does not assert the retention of title by exercising a right in accordance with Section 7.3. However, if this is the case, Company may demand that the Buyer discloses the assigned claims and their debtors, provides all information required for collection, hands over the relevant documents and notifies the debtors (third parties) of the assignment. In this case, Company shall also be entitled to revoke the Buyer's authority to further sell and process the Contract Products subject to retention of title.

iv. If the liquid value of the securities exceeds the claims of Company by more than 10%, Company shall release securities at the discretion of Company at the request of the Buyer.

8. Warranty rights

a. The statutory law shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect and short delivery), unless otherwise specified below.

b. In the case of final delivery of the Contract Products to a consumer (sale of consumer goods within the meaning of § 474 BGB), the special statutory provisions of §§ 445a, 445b, 478 para. 1 BGB always remains unaffected. In all other cases, the special regulations on supplier subrogation/recovery do not apply.

c. Liability for defects is primarily based on the agreement reached regarding the quality of the Contractual Products. All product descriptions and manufacturer details that are the subject of the respective sales contract and that were made public by Company at the time of conclusion of the respective sales contract (in particular in catalogues or on the homepage of Company) shall be deemed to be an agreement on the quality of the Contract Products.

d. If the quality has not been agreed, the statutory law shall determine whether there is a defect (§ 434 I sentence 2, 3 BGB). Company accepts no liability for public statements made by third parties (e.g. advertising statements) to which the Buyer has not referred as decisive for the Buyer's purchase.

e. The Buyer's warranty rights require that he has duly complied with his statutory inspection and complaint obligations pursuant to § 377 HGB (German Commercial Code). If the contractual relationship between Company and the Buyer is a contract for work and services, § 377 HGB shall apply mutatis mutandis.

f. If a delivered item or a manufactured work is defective, Company shall be entitled, at its discretion, either to remedy the defect or to deliver defect-free items to the Buyer or, in the case of a contract for work and services, to manufacture a new work (subsequent performance).

g. Company shall be entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due, but the Buyer shall be entitled to retain a reasonable part of the purchase price in relation to the defect.

h. The Buyer shall give Company the time and opportunity required for the owed subsequent performance, in particular the Buyer is obliged upon request to hand over the rejected Contract Products for inspection purposes.

i. The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, shall be borne and/or reimbursed by Company in accordance with the statutory law if a defect actually exists. In all other cases, Company may demand compensation from the Buyer for the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the Buyer was unable to recognize the absence of defects.

j. If the subsequent performance has failed or a reasonable period set by the Buyer for the subsequent performance has expired unsuccessfully or is dispensable according to the statutory law, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.

k. Claims of the Buyer for damages or reimbursement of futile expenses, also in the case of defects, shall only exist in accordance with section no. 9 of these GCS and shall otherwise be excluded.

9. Further liability

a. Unless stated otherwise in these GCS, Company shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory law.

b. Subject to the provisions of clause 9.c), Company shall be liable for damages - irrespective of their legal grounds - only in the event of intent and/or gross negligence, including intent and/or gross negligence of the representatives and/or vicarious agents of Company. Furthermore, Company shall also be liable in the event of ordinary negligence, including ordinary negligence of its representatives and/or vicarious agents, for damages arising from the breach of an essential contractual obligation, i.e. an obligation the fulfilment of which is essential for the proper performance of the contract and the fulfilment of which the contractual partner may therefore regularly rely on (Kardinalpflicht). Except for intentional breach of duty by Company, the liability of Company for damages shall, however, be limited to the foreseeable, typically occurring damage.

c. The foregoing exclusions and limitations of liability shall not affect claims for damages arising from injury to life, limb and health or claims of the Buyer under the Product Liability Act, the statutory special provisions for final delivery of the Contract Products to a consumer and other mandatory statutory liability provisions. The above exclusions or limitations of liability shall also not apply if Company has fraudulently concealed a defect or if Company is liable due to the assumption of a guarantee or due to the assumption of the procurement risk.

d. Sections 9.b) to 9.c) shall also apply if the Buyer demands compensation for futile expenses instead of a claim for damages in lieu of performance.

e. If the Buyer provides raw materials and/or packaging materials to Company for the processing by Company, Company shall not be liable for the compliance with any applicable food laws and any defect that may be caused by such materials.

f. Insofar as the liability for damages towards Company is excluded or limited, this shall also apply with regard to the personal liability for damages of its employees, workers, co-workers, representatives and vicarious agents that is based on the same legal grounds.

g. In the event of a breach of duty that does not consist of a defect, the Buyer may withdraw or terminate the contract if Company is responsible for the breach of duty. A free right of termination of the Buyer is excluded. Apart from that, the statutory requirements and legal consequences shall apply.

h. Company represents that, to the best of its knowledge, manufacturing, offering and / or distributing Contract Products does not infringe third-party intellectual property rights at Company's place of business. Buyer shall, at its sole responsibility, comply with all applicable laws and regulations when offering and / or distributing Contract Products. Buyer shall furthermore, at its sole responsibility, ensure that its use of Contract Products, in particular processing, converting and / or combining Contract Products with other substances or products, is in accordance with all applicable laws and regulations and does not infringe third-party intellectual property rights. Company shall not be liable for any intellectual property infringement that is caused by the Buyer's instructions.

10. Limitation period

a. The claims of the contracting parties against each other shall lapse in accordance with the statutory law, unless otherwise specified below.

b. Claims of the Buyer arising from material defects and defects of title shall lapse within one year of delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

c. Mandatory statutes of limitation shall remain unaffected. The relief from the statute of limitations mentioned in section 10.2 does not apply to claims due to injury to life, limb or health, to claims due to intent and / or gross negligence and to claims due to the assumption of a guarantee or the assumption of the procurement risk. Longer limitation periods pursuant to § 438 para. 1 no. 1 BGB (German Civil Code) (rights in rem of a third party), §§ 438 para. 1 no. 2, §§ 438 para. 3 BGB (fraudulent intent) also remain unaffected. If the last contract in the supply chain is a sale of consumer goods within the meaning of § 474 BGB (i.e. in the case of final delivery of the contractual products to a consumer), the limitation periods pursuant to § 445b BGB shall also remain unaffected.

d. The periods of limitation pursuant to Clauses 10.2 and 10.3 for claims based on material defects and defects of title shall apply mutatis mutandis to any other contractual and non-contractual claims for damages by the Buyer based on a defect in the Contract Products. However, if, the application of the statutory limitation rules should result in an earlier limitation of the competing claims, the statutory limitation period shall apply to the competing claims. The statutory limitation periods under the Product Liability Act shall remain unaffected in any case.

e. Insofar as the limitation period for claims against Company is shortened pursuant to clauses 10.b) to 10.d), this shortening shall apply mutatis mutandis to any claims of the Buyer against the legal representatives, employees, staff, agents and vicarious agents of Company based on the same legal basis.

11. Extraordinary termination

a. Company is entitled to terminate any or all contracts arising from the business relationship with the Buyer for good cause without notice, if, after conclusion of the contract, the economic situation of the Buyer deteriorates significantly and the proper performance of the Buyer's obligations towards Company appears to be at risk. This is particularly the case if the Buyer is subject to sustained seizures or execution measures.

12. Code of Conduct, compliance and anti-corruption

a. The Buyer accepts the Code of Conduct of Company (in its respective current version; available at https://www.savanna-ingredients.com) as the basis for the relationship between the Buyer and Company.

b. The Buyer warrants that its business activities are in accordance with (i) the statutory law, (ii) other applicable legal provisions and (iii) all contractual agreements with Company. The Buyer also warrants that sufficient organizational measures have been taken in his company to ensure compliance with the requirements described in sentence 1 above.

c. It is strictly prohibited for the Buyer to offer, promise or grant advantages to employees (including their relatives) of Company for their work for Company. If the Buyer violates this prohibition, Company may extraordinarily terminate the contract with immediate effect.

13. Data protection

a. The processing of personal data takes place exclusively in compliance with data protection regulations. Company processes personal data, which the Buyer transmits to Company, for the processing of the respective order as well as for future orders. This personal data is stored in the computer system of Company. Company is supported in the provision and operation of its computer systems by other companies, each of which is integrated in accordance with all applicable data protection regulations. Personal data will only be used for other purposes if the person concerned has consented to such other use or if there is legal permission for such other use.

b. In the event of a transfer of personal data to Company, the Buyer is obliged to inform the persons concerned in due time about the data processing by Company in accordance with Article 14 of the EU General Data Protection Regulation No. 2016/679;Company refrains from providing information to the person concerned. On request, Company will provide the Buyer with the information necessary to fulfil the information obligations under the previous sentence.

14. Severability clause, choice of law and place of jurisdiction

a. These GCS and the contractual relationship between Company and the Buyer shall be governed by the law of the Federal Republic of Germany excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

b. If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship shall be Cologne. The same applies if the Buyer is an entrepreneur within the meaning of § 14 BGB (German Civil Code). Prevailing statutory provisions, in particular regarding exclusive jurisdiction, remain unaffected.

c. In the event of the invalidity of individual provisions of these GCS, the remaining provisions shall remain fully effective. Ineffective provisions shall be replaced by provisions which come as close as possible to the economic result in accordance with the purpose pursued by the ineffective provision.