

ORNUA INGREDIENTS UK LIMITED – TERMS & CONDITIONS OF SALE

The Customer's attention is drawn in particular to the provisions of condition 9.

1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with condition 11.6.

Contract: the contract between Ornuia and the Customer for the sale and purchase of Goods in accordance with these Conditions.

Customer: the person or entity who purchases Goods from Ornuia.

Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Force Majeure Event: has the meaning given in condition 10.

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: all copyright, design rights, trade marks, trade names, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world.

Order: the Customer's order for the Goods.

Ornuia: Ornuia Ingredients UK Limited (registered in England and Wales with UK company registration number 03269504).

Specification: any specification for the Goods which is agreed in writing by the Customer and Ornuia. A reference to **writing** or **written** includes e-mails.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, unless otherwise agreed in writing by Ornuia and the Customer, no other terms and conditions of the Customer shall apply to the sale by Ornuia of the Goods. Any such terms are hereby rejected and excluded. Signature on behalf of Ornuia of any of the Customer's documentation will not override these Conditions. The Customer's acceptance of all or any part of an Order shall constitute acceptance by the Customer of these Conditions.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Ornuia issues a written acceptance of the Order or, if earlier, when the Goods are delivered by Ornuia to the Customer, at which point the Contract shall come into existence.

2.4 A quotation given by Ornuia shall not constitute an offer and is subject to withdrawal at any time until Ornuia issues a written acceptance of an Order. Quotations are deemed to be withdrawn unless accepted within 30 Days of the date of the quotation.

2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Ornuia, whether orally or in writing, which is not set out in the Contract.

2.6 Any samples, descriptive matter or advertising produced by Ornuia and any descriptions or illustrations contained in Ornuia's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.7 Ornuia may deliver the Goods by instalments. Each instalment shall be deemed to be sold under a separate contract and shall be invoiced and paid for separately.

3. GOODS

3.1 The Goods are described in the Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Ornuia against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Ornuia

in connection with any claim made against Ornuva for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Ornuva's use of the Specification. This condition shall survive termination of the Contract.

- 3.3 Ornuva reserves all rights in its Intellectual Property Rights. No licence is hereby granted to the Customer directly or indirectly under any Intellectual Property Right held, made, obtained or licensable by Ornuva now or in the future.
- 3.4 The Customer shall not use (other than pursuant to the Contract) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to, or incorporates any trade mark or trade name which Ornuva owns or claims rights in anywhere in the world.

4. DELIVERY

- 4.1 Ornuva shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Ornuva reference numbers and the type and quantity of the Goods (including the code number of the Goods, where applicable). The Customer must check and sign any delivery documents, which will be proof of delivery of the Goods.
- 4.2 Ornuva shall deliver the Goods at or to the location set out in the Order or such other location as the parties may agree (**Delivery Location**), which may include delivery to a carrier.
- 4.3 In the case of Goods delivered in sealed containers, the Customer must ensure that:
- a) the containers and the seal numbers and quantities correspond with those shown on the delivery note;
 - b) the seals are intact and the Customer notifies Ornuva without delay of any discrepancy or broken seal; and
 - c) local Customs and Excise Officials are present if any action is taken.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 4.5 If Ornuva fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Ornuva shall have no liability for any delay in delivery of the Goods or any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Ornuva with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If within 10 Days after the day on which Ornuva notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Ornuva may resell or otherwise dispose of part or all of the Goods and charge the Customer for any reasonable storage and selling costs.
- 4.7 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by Ornuva, the Customer shall make those licences and consents available to Ornuva prior to the relevant shipment.
- 4.8 Unless otherwise specified in writing, all pallets, steel cages (and any variations thereof), glass bottles and plastic crates remain the property of Ornuva and are returnable to Ornuva in the same state and condition in which they were delivered at the cost of the Customer. Ornuva reserves the right to charge the Customer for pallets, steel cages (and any variations thereof), glass bottles and plastic crates which have not been returned to Ornuva within the time specified by Ornuva or which have been returned and are not in the opinion of Ornuva in a fit state or condition for reuse by Ornuva. Pallets, steel cages (and any variations thereof), glass bottles and plastic crates shall not be re-used by the Customer before their return to Ornuva.

5. QUALITY

- 5.1 Ornuva warrants that on at the date of delivery the Goods shall conform in all material respects with their description and any applicable Specification.
- 5.2 Subject to condition 5.3, if:
- (a) the Customer gives notice in writing to Ornuva within a reasonable time of discovery (but no later than 5 Days) that some or all of the Goods do not comply with the warranty set out in condition 5.1 or of whole or partial non-delivery or shortages;
 - (b) Ornuva is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by Ornuva) returns such Goods to Ornuva's place of business, Ornuva shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods or the non-delivered Goods in full.

- 5.3 Ornuu shall not be liable for Goods' failure to comply with the warranty set out in condition 5.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with condition 5.2;
 - (b) the defect arises because the Customer failed to follow Ornuu's oral or written instructions as to the storage, handling and use of the Goods or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of Ornuu following any drawing, design or specification supplied by Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of Ornuu;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 The Customer must notify Ornuu in writing of any seizures for whatever reason and deliver full particulars to Ornuu within 5 Days of the date of the seizure supported by certificates signed by a recognised public health official or official of a recognised regulatory body giving full relevant details including any relevant time-limits or other conditions and the reason for any seizure.
- 5.5 Ornuu reserves the right to make any changes to the Specification which do not materially affect the quality of the Goods and which are required to conform with applicable statutory or regulatory requirements or where the Goods are to be supplied to Ornuu's specification.
- 5.6 Except as provided in this condition 5, Ornuu shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 5.1. No warranty is given:
- (a) where the Goods are packaged under the Customer's own label or in accordance with the instructions of the Customer, that the information on the packaging of the Goods (for example the integration of technical data such as nutritional information for customers and the identification of ingredients) complies with applicable laws in the respective country of sale;
 - (b) that the Goods may lawfully be supplied or offered for sale outside the UK; or
 - (c) that the Goods are suitable for mixing, blending, compounding with or incorporating into other goods unless the Customer has made full disclosure of all material facts relating to the use to which the goods are to be put and of any particular standards, requirements or specifications to which those other goods are expected to conform. The Customer will indemnify Ornuu against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Ornuu arising through the Customer's failure to make such disclosure. This condition shall survive termination of the Contract.
- 5.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and any other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 5.8 The Customer must observe (including before title to the Goods passes) storage and transportation conditions suitable for the Goods and proper stock rotation in the case of all Goods and must not release Goods for sale or distribution where, because of their age or having regard to the time normally taken in the progress of Goods along the distribution chain, they could not reasonably be expected to reach the ultimate consumer in a fresh and wholesome state and before the end of their recommended shelf life. The Customer shall indemnify Ornuu against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Ornuu in connection with any breach by the customer of this condition 5.8. This condition shall survive termination of the Contract.
- 5.9 The Customer must not obscure, remove, conceal or otherwise interfere with any markings or other indication of source or origin on any Goods or their labelling or packaging.
- 5.10 These Conditions shall apply to any repaired or replacement Goods supplied by Ornuu.
- 6. TITLE AND RISK**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery to the Delivery Location.

- 6.2 Legal and beneficial title to the Goods shall not pass to the Customer until Ornuva has received (i) payment in full (in cash or cleared funds) for the Goods and (ii) if applicable, any other goods that Ornuva has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods as Ornuva's fiduciary agent and bailee;
 - (b) store the Goods separately from all other goods held by the Customer and ensure that they are readily identifiable as Ornuva's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) permit Ornuva to enter any premises of the Customer or of any third party where the Goods are stored in order to recover them;
 - (f) notify Ornuva immediately if it becomes subject to any of the events listed in condition 8.2;
 - (g) give Ornuva such information relating to the Goods as Ornuva may require from time to time; and
 - (h) not pledge or in any way charge by way of security any of the Goods which remain the property of Ornuva.
- 6.4 If despite condition 6.3, the Customer resells the Goods before Ornuva receives payment for the Goods:
- (a) it does so as principal and not as Ornuva's agent; and
 - (b) title to the Goods shall pass from Ornuva to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in condition 8.2, or Ornuva reasonably believes that any such event is about to happen and notifies the Customer accordingly, or Ornuva otherwise seeks to enforce its retention of title rights, the Customer shall immediately cease to use or deal with the Goods, Ornuva may require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6.6 Ornuva may at any time after delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the Price to Ornuva.
- 6.7 If the Customer contravenes any of the provisions of this condition 6, all sums which the Customer owes to Ornuva will become due and payable immediately.

7. PRICE AND PAYMENT

- 7.1 The price of the Goods shall be Ornuva's quoted price. Where no price has been quoted (or a quoted price is no longer valid), the price set forth in the order confirmation or the invoice issued by Ornuva shall apply. All prices are subject to change without notice.
- 7.2 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Ornuva, pay to Ornuva such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.3 Unless otherwise agreed in writing, Ornuva may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.4 The Customer shall pay the invoice in full and in cleared funds by the due date of the invoice and if no due date is stated within 14 Days after the receipt of the invoice by the Customer. Payment shall be made to the bank account nominated in writing by Ornuva. Time of payment is of the essence.
- 7.5 The terms and extent of any extension of credit granted (whether orally or in writing) to the Customer may be varied or withdrawn at any time.
- 7.6 Any increase in costs or expenses arising from any act or omission or any special requirements of the Customer or any modifications made at the Customer's request in relation to the Goods may be charged to the Customer.
- 7.7 Where a Customer pays by cheque or trader's credit, Ornuva will not issue a receipt unless the Customer so requests.
- 7.8 If the Customer fails to make any payment due to Ornuva under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Ornuia in order to justify withholding payment of any such amount in whole or in part. Ornuia may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Ornuia to the Customer.

8. TERMINATION, SUSPENSION OR CANCELLATION OF DELIVERIES

8.1 If the Customer becomes subject to any of the events listed in condition 8.2, or Ornuia reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, or the Customer fails to pay any outstanding amounts owing to Ornuia, or ceases to take supplies from Ornuia (for whatever reason) or is otherwise in breach of these Conditions, then, without limiting any other right or remedy available to Ornuia, Ornuia may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Ornuia without incurring any liability to the Customer, and all outstanding sums which the Customer owes to Ornuia will become due and payable immediately.

8.2 For the purposes of condition 8.1, the relevant events are:

- (a) the Customer is the subject of an insolvency action or event;
- (b) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (c) the Customer's financial position deteriorates to such an extent that in Ornuia's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (d) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 On termination of the Contract for any reason the Customer shall immediately pay to Ornuia all outstanding sums which the Customer owes to Ornuia including any interest.

8.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

8.5 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

9.1 **Nothing in these Conditions shall limit or exclude Ornuia's liability for:**

- (a) **death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);**
- (b) **fraud or fraudulent misrepresentation; or**
- (c) **any matter in respect of which it would be unlawful for Ornuia to exclude or restrict liability.**

9.2 **Subject to condition 9.1:**

- (a) **Ornuia shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, punitive damages, or any indirect or consequential loss arising under or in connection with the Contract; and**
- (b) **Ornuia's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.**

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires,

floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. GENERAL

11.1 Assignment and subcontracting.

- (a) Ornuia may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Ornuia.

11.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this condition, and shall be delivered personally, sent by pre-paid post, recorded delivery, commercial courier or e-mail.
- (b) The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.5 Third party rights. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

11.6 Variation. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Ornuia.

11.7 Confidentiality. The Customer shall keep confidential (and ensure that its employees, agents, professional and other advisors keep confidential), any information which it may have or acquire in relation to the operations, contracts, commercial or financial arrangements of Ornuia.

11.8 Governing law and jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of England and Wales.

11.9 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

October 2018 version