

As of November 2016

## **1. Scope of application**

### **General Terms and Conditions of Sale**

#### **1.1.**

The following General Terms and Conditions of Sale shall apply to all contracts between Finwerd Flavours & Fragrances (from now on referred to as “Finwerd”) and the customer. Divergent and adverse terms and conditions of the purchaser shall not be accepted unless they have been confirmed by Finwerd in writing. Oral agreements, changes and/or amendments to the contract shall only become effective through written confirmation by Finwerd's management and shall not influence future contracts between the parties. The Terms and Conditions of Sale shall even apply in the event that we perform the delivery with the knowledge of the purchaser's divergent or adverse terms and conditions. These Terms and Conditions of Sale shall be deemed to be accepted at the latest with taking delivery of the goods.

#### **1.2.**

The General Terms and Conditions of Sale shall only apply to all legal entities in the sense of book 2 of the Dutch Civil Code.

#### **1.3.**

In the event that the customer should not have received these Terms and Conditions together with the offer or they should not have been provided to the customer on another occasion, they shall nevertheless be applicable if the customer knew them or had to have prior knowledge of them through a previous business relationship.

#### **1.4.**

Finwerd underlines that any previous oral agreements shall not apply. In particular, we refer to the fact that sales representatives of Finwerd are only authorised to receive orders/purchase requests but are not entitled to make agreements which deviate from these Terms or to accept any terms and conditions of the purchaser.

## **2. Communication / Written form**

The requirement of the written form shall be fulfilled if the communication is being carried out via e-mail and the sender is able to provide electronically generated acknowledgements of receipt for e-mails to the content to which he refers to.

## **3. Orders / Order confirmation**

### **3.1.**

In principle, offers by Finwerd shall not be binding and shall not constitute any obligation to deliver. After the customer has submitted an order, a bilateral contract shall be concluded through the order confirmation.

### **3.2.**

The documents and information related to the order are based on the present level of scientific knowledge and have been created and gathered with the utmost care. The product-specific data is based on our own examinations or data provided by the raw material suppliers. The provision of such data shall not imply the assumption of a promise of a guarantee. We expressly point out that the submission of documents and information shall not release the purchaser from its obligation in accordance with item 11.1. of these Terms and Conditions of Sale to examine any goods arriving at its premises and shall therefore not be connected to any statement regarding the usability of the goods for the use intended by the customer (item 8.7.).

### **3.3.**

In principle, the contract shall not be deemed to be concluded until orders of the purchaser, as well as delayed and amended acceptances of offers have been confirmed by Finwerd in writing.

## **4. Delivery**

### **4.1.**

The customer shall obtain the ownership of the product through handing over and subject to the provisions of item 7 of these Terms and Conditions of Sale. Industrial property rights, licenses regarding the product, or marketing rights shall not be transferred.

### **4.2.**

Finwerd shall be entitled to deliver before the agreed date.

### **4.3.**

Finwerd shall be released from the obligation to deliver in the event that the pre-supplier has ceased to produce the ordered goods or in the event of force majeure, provided that these circumstances have only occurred after the conclusion of the contract and Finwerd is not liable for not being supplied by such pre-supplier.

4.4.

Every delivery shall be treated independently. A restricted availability in the event of one delivery shall not have any consequences for other orders.

## **5. Price**

5.1.

The prices of the products shall be indicated in the order confirmation. A later change may result in a price adjustment only in the event that the delivery date should be later than twelve months after the conclusion of the contract.

5.2.

The prices are indicated excluding VAT and other relevant taxes and duties. The VAT shall be indicated in the invoice with its correct statutory amount.

## **6. Payment**

6.1.

In accordance with Section 2 of the Dutch Civil Code, the payment shall be due at delivery or provision and after receiving the goods and the invoice. This shall also apply to partial deliveries.

6.2.

The purchaser shall be in default in the event that the purchaser should receive a reminder notice after the due date or after the expiration of a period of 30 days after the due date and receipt of an

invoice. In the event of a default, the purchaser shall pay default interest at the rate of 8 percentage points above the basic interest rate in accordance with article 6:81 of the Dutch Civil Code.

6.3.

The purchaser may only offset against claims which are uncontested or have become res judicata.

6.4.

At our option, incoming payments may be used as compensation for the oldest obligation or the one which is least secured.

6.5.

Partial deliveries shall be invoiced immediately and each of them shall separately be due for payment, regardless of the completion of the total delivery. In the absence of written agreements, advance payments upon conclusions of contracts shall be offset against the oldest partial delivery in each case.

## **7. Reservation of ownership**

### **7.1.**

Until all liabilities arising from this contractual relationship have been completely fulfilled, the goods shall remain in the ownership of Finwerd.

### **7.2.**

The goods which are subject to a reservation of ownership shall at all times be processed by order of Finwerd. In the event of a treatment or processing or mixing, the reservation of ownership shall thus be extended to the new product.

### **7.3.**

The purchaser undertakes to accordingly safeguard the ownership of Finwerd in the event that the delivered goods are not intended directly for the customer but for third parties, and the purchaser shall expressly indicate this reservation of ownership to the recipient.

### **7.4.**

Already now, the purchaser shall transfer to Finwerd all its future purchase price claims arising from the resale of the goods which are subject to the reservation of ownership.

### **7.5.**

In the event of severe and justified doubts about the solvency of the client, Finwerd shall be entitled to require the handing over of the goods which are subject to a reservation of ownership without granting an additional period of time.

### **7.6.**

As long as the purchaser should be in arrears with the acceptance or receipt of delivery, respectively, or with the settlement of a matured claim for payment, Finwerd shall be entitled to refuse the performance of the contract entirely or to exercise a right of retention also regarding partial deliveries.

## **8. Product quality, Minimal deviations, Guarantees**

### **8.1.**

Unless otherwise agreed, the quality of the goods shall exclusively be derived from the product specifications of Finwerd. Identified usages in accordance with the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) relevant to the goods shall neither constitute an agreement regarding a corresponding contractual quality of the goods nor a usage that was assumed in accordance with the contract.

### **8.2.**

Characteristics of models and samples shall only be binding as far as the parties have expressly agreed that they shall be samples of qualities of the goods.

8.3.

Information regarding the quality, durability, as well as other information shall only be guaranteed or

warranted characteristics, respectively, in the event that they have been agreed and designated as such.

8.4.

Fluctuations in quality which are due to the natural attributes of the goods shall not entitle the purchaser to file complaints and to assert claims, respectively.

8.5.

As far as Finwerd should advise the customer in connection with the order, this shall be carried out to the best of Finwerd's knowledge. However, information and references regarding the suitability and usage of the goods shall not release the purchaser from carrying out its own examinations and inspections.

8.6.

The purchaser shall be responsible for compliance with statutory and regulatory provisions and directions regarding the import, transport, storage, and use of the goods.

8.7.

In no event shall Finwerd be liable for the fact that the delivered goods are suitable for the use intended by the client.

## **9. Transport, Packaging, Passing of risk**

9.1.

Unless otherwise agreed, the selection of the shipping method shall be left to Finwerd's discretion.

9.2.

Deliveries shall include standard packaging. The costs for disposing of the empty packaging shall be borne by the purchaser.

9.3.

The delivery shall be carried out in accordance with the trade term agreed in the particular case, to the interpretation of which the INCOTERMS® shall apply (as amended at the time of the conclusion of the contract).

9.4.

In the event of the delivery of damaged goods, Finwerd shall be informed promptly, but not later than within 24 hours. Later complaints may not be accepted and the purchaser shall not be entitled to derive from them any claims against Finwerd. However, the purchaser shall be obliged to have the damage confirmed in writing by the person carrying out the transport or to document the damage for purposes of evidence in another suitable way.

9.5.

Returnable containers, which are in the ownership of Finwerd, shall be returned to Finwerd free of charge and in a timely manner, but not later than within two months from the delivery. In the event that such a return should not be carried out promptly, Finwerd shall be entitled to charge lending fees.

Utilisation of returnable containers as storage containers by the purchaser for the duration of the period until the best-before date or beyond shall not be permitted. The purchaser shall be expressly prohibited to fill the returnable containers with other products.

## **10. Default in taking delivery**

10.1.

In the event that the purchaser should remain silent, refuse to accept the goods, or explicitly express its will to refuse the acceptance after an additional appropriate time limit has been set for the purchaser, Finwerd may rescind from the contract or claim damages for nonperformance.

10.2.

The costs caused by the delayed acceptance, particularly costs for storage and renewed delivery, shall be borne by the client.

## **11. Duty to examine / Complaints / Warranty**

11.1.

On receipt, the goods shall be promptly examined in terms of weight, quantity, amount, shape, type, and other relevant characteristics in accordance with Finwerd's specifications. Finwerd shall be informed immediately of any deviations. Customers' complaints may only be taken into account in the event that they are announced to Finwerd in writing and in detail within ten calendar days after the receipt and before the processing of the goods.

11.2.

As far as Finwerd is not liable for the defect that constitutes a breach of obligation, the purchaser shall not be entitled to rescind the contract.

11.3.

After the expiration of the ten days for making a claim indicated in 11.1, any claims connected thereto shall be excluded.

11.4.

In the event that the delivery of goods with a different quality has been agreed upon, the purchaser shall not be entitled to assert any claims arising from possible defects.

## **12. Rescission**

Unless the purchaser immediately pays in advance, Finwerd shall be entitled to a right of rescission in the event that the purchaser has given incorrect information

regarding the facts that determine the purchaser's creditworthiness or the purchaser stops its payments or an application to open insolvency proceedings has been submitted regarding the purchaser's assets or obligations to pay arising from previous deliveries have not been met although the purchaser is in default.

### **13. Data protection**

Finwerd expressly indicates that in accordance with section Art. 6 of the GDPR [*In Dutch AVG*], customer data of the supply relationship is being stored for internal use.

### **14. Liability**

#### **14.1.**

A confirmed delivery date is subject to the fact that Finwerd itself has received deliveries from its suppliers correctly, completely, and in due time. In the event that Finwerd has not received a delivery by its suppliers, both parties shall be entitled to rescind the contract in the event that the delivery date should be exceeded by more than six months.

#### **14.2.**

In the event of the contravention of a substantive contractual obligation (cardinal duty), i.e. an obligation which at all enables the orderly performance of the contract and the contravention of which endangers the achievement of the contractual purpose and the compliance with which the client usually may expect, the liability shall be limited to the damage that is foreseeable in the context of such a contract.

#### **14.3.**

The liability for damages in accordance with item 14.2. shall be limited to the amount of the consideration arising from the respective individual order that is provided for in the contract.

#### **14.4.**

Finwerd shall be fully liable only in the event of intent or gross negligence as well as in the event of the absence of guaranteed characteristics.

#### **14.5.**

The liability for loss of profit and savings that have not been possible as well as the liability for any other type of consequential damage caused by a defect, shall be excluded.

#### **14.7.**

Otherwise, the liability for slight negligence shall be excluded.

#### **14.8.**

Events of force majeure, which the debtor is not liable for in accordance with section 276 of the BGB, shall release Finwerd from the performance of assumed contractual obligations as long as these events persist. The client shall immediately be informed about the expected duration of such an event. In the



case that such an event should take more than three months, both parties shall be entitled to rescind from the contract. Any liability with an effect beyond that scope shall be excluded. Force majeure shall include any circumstances, which are independent of the will and influence of the contractual parties. Examples of force majeure shall be: natural disasters, governmental decisions, regulatory decisions which have not been foreseeable, blockades, civil unrest, mobilisation, strikes at cooperation partners, seizure, embargo, war, military conflicts, and terrorism as well as other circumstances which are not able to be predicted, severe and occur after the conclusion of the contract.

14.9.

Finwerd shall not be liable for the impossibility or delay of fulfilling delivery obligations in the event that the impossibility or delay should be based on the orderly compliance with obligations under public law caused by the purchaser.

## **15. Non-disclosure**

15.1.

The contractor shall be obliged to treat as strictly confidential all images and other documents the contractor received that concern the business of Finwerd. They must not be disclosed to third parties.

15.2.

The obligation to maintain secrecy shall also apply after the performance and/or in the event of the failure of a contract.

15.3.

Subcontractors shall be obligated accordingly.

## **16. Place of jurisdiction / Place of performance**

The exclusive place of jurisdiction for deliveries, services, and payments, as well as for any disputes arising between the parties, shall be The Hague, The Netherlands. The place of performance for all transactions shall be The Hague, The Netherlands.

## **17. Modifications to the contract / Final provisions**

Additional agreements or agreements diverging from the abovementioned provisions shall be required in writing. This shall also apply to the change of this requirement of the written form. In the event that individual provisions should be invalid or void, the validity of the other provisions shall remain unaffected.

## **18. Applicable law**

The contractual relationships shall be exclusively governed by Dutch law. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.



## 19. Legally binding version

The Terms and Conditions of Sale are provided in English. In the event of divergent meanings of individual sections, in every case exclusively, the Dutch version shall be binding.

## General Terms and Conditions of Purchase As per November 2012

The following **General Terms and Conditions of Purchase** shall form the basis of our contracts.

### 1. Scope of application

Our purchases, services, and offers will be exclusively undertaken and delivered on the basis of these Terms and Conditions. Divergent or adverse terms and conditions of the seller will not be accepted unless they have been confirmed by us in writing. Even though accepting the delivered goods, we do not accept any divergent terms and conditions of the seller. The Terms and Conditions of purchase of the Finwerd Flavours & Fragrances (from now on referred to as "Finwerd") shall also apply in the event that the contract is unconditionally performed with the knowledge of terms and conditions of the supplier, which are contrary to or divergent from the purchase Terms and Conditions of Finwerd. At the latest, our Terms and Conditions of purchase shall be deemed to be accepted upon the shipment of the ordered goods or partial delivery.

### 2. Communication / Written form

The requirement of the written form shall be fulfilled if the communication is carried out via e-mail and the sender is able to provide electronically generated acknowledgements of receipt for e-mails the content of which the sender refers to.

### 3. Conclusion of contracts

#### 3.1.

Orders and changes to orders shall only be valid when made in writing. In the event of changes to the offer after an inquiry by Finwerd, the contractor shall separately indicate the respective change. Agreements made orally or via telephone shall only be valid when (afterwards) confirmed in writing

#### 3.2.

With or without a subsequent conclusion of a contract, estimates of costs, models, samples, and the like shall not be remunerated.

### 4. Dates, Defaults

#### 4.1.

The dates stated in the order shall be binding. The receipt of the goods or the completion and the acceptance of the agreed service performance at Finwerd, respectively, shall be decisive for compliance with the delivery date.

4.2.

The contractor shall promptly inform Finwerd in writing as soon as the contractor is able to foresee that it will not be able to fulfil its contractual obligations. This obligation to inform shall include the statement of reasons for the delay and the estimated duration.

4.3.

In the event that the obligations should not be fulfilled by the contractor within the time for delivery, Finwerd shall be entitled to any claims in accordance with the statutory regulations. Receiving a

delayed delivery shall not constitute a waiver of claims for damages caused by default and for reimbursement of expenses.

4.4.

In the event of a default, Finwerd shall be entitled to purchase goods in replacement themselves and at the expense of the supplier.

4.5.

In the event that the supplier should be in default, the supplier shall pay a contractual penalty amounting to 0.2 percentage points of the total order value for each day of exceeding the time limit, but up to a maximum of 5 percentage points of the order value. The contractual penalty shall be calculated for the period of time since the time limit was exceeded and until the complete performance of the service or the delivery of the declaration of rescission from the contract. Finwerd reserves the right to assert further claims for damages as well as further statutory claims. A possibly paid contractual penalty shall be offset against the claim for damages. Finwerd shall be entitled to assert the contractual penalty until the final payment for the order and deduct the amount of the contractual penalty from the invoice amount.

## **5. Reservation of ownership**

In the event that the ordered goods are delivered subject to a reservation of ownership, Finwerd shall nevertheless be entitled to use and to process the goods which are subject to a reservation of ownership.

## **6. Warranty / Guaranty**

6.1.

The contractor guarantees that the goods have all the qualities which are in the case of raw materials required by Finwerd's specifications and which are warranted by the supplier. The goods must be suitable for the use designated by the contract. Articles which upon delivery are marked with a best- before date or a use-by date, respectively, shall have a remaining term until that date of at least 75 per cent of their total durability.

6.2.

Except as otherwise provided by law, the supplier shall guarantee that the delivered goods comply in every respect with the agreed specifications, the

current state of scientific and technical knowledge, as well as the relevant statutory provisions and standards for the respective purpose of use, in particular with provisions of the laws relating to foods and drugs and that they are suitable for the intended use.

6.3.

The statutory provisions shall apply to the rights of Finwerd in the event of defects of quality or title of the goods (including incorrect or short deliveries) and other breaches of duty made by the supplier.

6.4.

Any defects shall be reported promptly after having gained knowledge of them. Non-obvious defects shall be reported after discovering them and within a period of four weeks and in the event of raw materials until the best-before date. A confirmation on bills of delivery shall not be deemed an acceptance of the goods.

6.5.

In the event that expenses or costs should accrue for Finwerd in connection with the faulty delivery (e.g. inspection costs or costs of expert opinions, costs of necessary substitute and replacement purchases from other suppliers, costs of product recalls, legal costs), the supplier shall reimburse them. Any further statutory claims shall hereby remain unaffected.

6.6.

On initial request, the supplier shall indemnify Finwerd against any claims of third parties which may be asserted due to defects or damages of products of the supplier's delivery on the basis of the

supplier's share in causing the defects or damage. The supplier undertakes to place into effect product-liability insurance with an insured sum that is appropriate for the goods to deliver and maintain this insurance during the duration of the supply relationship.

## **7. Terms of shipment / Passing of risk**

7.1.

In the event of dates of delivery diverging from the contract, Finwerd reserves the right to return the goods at the expense of the contractor.

7.2.

Partial deliveries will only be accepted after written confirmation.

7.3.

The necessary safety data sheets and documents requested in the order shall also be delivered at the latest with the shipment of the goods or with the performance of the service, respectively.

## **8. Prices / Due date / Place of performance**

8.1.  
The price stated in the order shall be binding. The individual prices shall be indicated in the order as net prices.

8.2.  
The place of performance for the payment shall be the European headquarters of Finwerd. Unless the parties have agreed on a different place of performance for services, the services shall be performed there.

8.3.  
Copies of invoices shall be clearly designated as such.

8.4.  
The time limit for the payment of the invoice shall start with the receipt of an orderly invoice, but not before the receipt of the goods. The payment shall neither constitute an acceptance of orderly performance nor a waiver of possible warranty claims.

## **9. Non-disclosure**

9.1.  
The contractor shall be obliged to treat as strictly confidential all received images and other documents which concern the business of Finwerd. They must not be disclosed to third parties.

9.2.  
The obligation to maintain confidentiality shall also apply after the performance and in the event of the failure of a contract.

9.3.  
Subcontractors shall be obliged accordingly.

## **10. Property rights**

The supplier guarantees that the delivery of the supplier's service does not infringe any property rights or other rights of third parties. The supplier shall indemnify Finwerd on initial request against any claims of third parties, which should be asserted on the basis of such an infringement.

## **11. Documentation**

The supplier shall be obliged to take out retained samples from every delivered batch immediately before bottling/packing them into the transport containers and store them at least until the expiration of the best-before date. Finwerd shall be entitled to request samples for subsequent examinations at all times.

## **12. Applicable law**

It shall be deemed agreed that all contracts shall be governed by Dutch law; the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

## **13. Place of performance / Place of jurisdiction / Partial invalidity**

### **13.1.**

The legal invalidity of individual provisions of these Terms and Conditions shall not affect the validity of the other provisions.

### **13.2.**

The place of performance for all liabilities arising from the contract, including Finwerd's payment obligations, shall be The Hague, The Netherlands.

### **13.3.**

The place of jurisdiction for all disputes arising from or in connection with the order shall be The Hague, The Netherlands.

## **14. Advertising**

The contractor shall not be allowed to refer to the existing business relationship with Finwerd in its advertising without Finwerd's written consent. The same shall apply to respective indications at exhibitions and fairs.

## **15. Legally binding version**

The Terms and Conditions of Purchase are provided in Dutch and in English. In the event of divergent meanings of individual sections, in every case exclusively the Dutch version shall be binding.