

Borregaard AS

General Terms and Conditions for sale of EUROVanillin



1. The Parties, the Contract and Written notices

Agreements concerning sale of all Vanillin products ("EUROVanillin") from Borregaard AS are entered into between Borregaard AS, Hjalmar Wessels vei 10, 1721 Sarpsborg, organization number 895 623 032 ("BAS"/"the Supplier") and the buyer (the "Buyer"), and shall be binding according to clause 2. The Supplier and the Buyer shall collectively constitute "the Parties" (and individually constitute "a Party") to the Contract. The complete agreement between the Parties (collectively, the "Contract") shall exhaustively consist of the following Contract documents: (i) These General Terms and Conditions for sale ("GT&C"), (ii) a Framework Agreement (if any), (iii) a quotation issued by the Supplier (if any), (iv) an order issued by the Buyer, (v) an order confirmation issued by the Supplier, (vi) a price list issued by the Supplier (if any), (vii) a product data sheet issued by the Supplier (if any) and (viii) changes to the GT&C (if any). Supplementary or deviating terms and conditions in (or referred to in) the order or in any other communication from the Buyer (or anyone who is in contact with the Supplier on behalf of the Buyer), shall not form part of the Contract. Changes to the GT&C are only valid and effective if they are accepted in writing by both Parties and included in the Contract as a separate Contract document. A notice which is handed over or sent from one Party to the other by letter, facsimile, telex or email shall be regarded as a "Written notice" according to the Contract.

2. The binding agreements concerning the deliveries. Terms of payment and delivery

A binding agreement according to the Contract is created when, an order from the Buyer (including a call-off order under a Framework Agreement) is accepted by the Supplier in an order confirmation. If there are deviations between the order and any of the other Contract documents (collectively, "the BAS-documents"), the BAS-documents shall prevail as forming the Contract, unless the Buyer has protested against the BAS-document(s) in question in a Written notice at the latest the day when the order confirmation was received. The Supplier reserves the right to refuse to accept any order on any grounds whatsoever. Terms of payment and delivery shall be as stated in the Contract. If no terms of payment and/or delivery are included in other parts of the Contract, payment shall place within 30 (thirty) days net from date of invoice and delivery shall take place EXW INCOTERMS 2010 at the BAS site specified in a Written notice given by the Supplier. Title to the EUROVanillin shall remain by the Supplier and shall not pass to the Buyer until payment in full for the same has been received by the Supplier.

3. Breach of Contract

Breach of Contract does not occur if late delivery/non-delivery or deviation from agreed quality or quantity concerning the EUROVanillin is due to the Buyer's circumstances or a Force majeure event according to clause 4.

3.1 Delays. The Supplier shall inform the Buyer about any actual or anticipated delay/non-delivery of EUROVanillin and shall, if possible, indicate when the delivery can be expected to take place.

If a delay exceeds 8 (eight) weeks from the agreed delivery date, the Buyer may cancel the order by giving the Supplier a Written notice. The remedies under this clause 3.1 are exhaustive and exclusive of any other remedy for delay in delivery or non-delivery.

3.2 Defects. The EUROVanillin is defective if, and only if, it does not conform to the specifications in the Contract. However, a weight or volume excess or deficiency up to 2 (two) percent of the weight or volume in the Contract shall be deemed to conform to these specifications. Unless explicit stated in the Contract, it shall not be regarded as a defect that the EUROVanillin is not fit for a particular purpose or cannot meet requirements for its intended use.

If EUROVanillin is defective according to the provisions above in clause 3, the Supplier shall (provided that remedy is claimed by the Buyer) at its option:

- (a) Replace the defective EUROVanillin with conforming EUROVanillin without any additional payment by or expenses for the Buyer, or
- (b) rectify the defective EUROVanillin without any additional payment by or expenses for the Buyer, or
- (c) reduce the price of the defective EUROVanillin which shall be retained by the Buyer, subject to agreement between the Parties regarding the size of the price reduction.

If the Supplier has delivered defective EUROVanillin to the Buyer, the Buyer shall be entitled to claim damages for direct losses it suffers due to the defective EUROVanillin in question. The Supplier shall not be liable (i) for loss of profits (whether direct or indirect loss), (ii) for loss of goodwill, or (iii) for any other indirect or consequential loss of any nature whatsoever which the Buyer incurs or suffers due to the defective EUROVanillin. The liability of the Supplier in relation to the defective EUROVanillin shall in any case be limited to the agreed price for the defective delivery in question.

The Buyer shall have no remedy (including the right to claim damages) for lack of conformity if he fails to notify the Supplier thereof in a Written notice within 30 (thirty) days after it has received the EUROVanillin. The remedies under this clause 3.2 are exhaustive and exclusive of any other remedy of non-conformity/defects.

3.3 Breach of other obligations under the Contract. In case of any delay in payment, the Supplier is entitled to claim interest on overdue payments and make other claims (if any) in accordance with Norwegian law. If a Party breaches other obligations under the Contract than those concerning delayed delivery/payment or defective EUROVanillin, the other Party shall be entitled to claim damages for all direct losses it suffers due to the breach of Contract. Indirect or consequential damage may in such cases be claimed only if the defaulting Party has acted negligently.

4. Force majeure events

A Force majeure event shall in this Contract mean any circumstances outside the Party in question's control which impedes the performance of any obligation under the Contract. No breach of Contract occurs if the Party in question proves that compliance with the Contract has been prevented due to a Force majeure event. The following events shall in any case be regarded as Force majeure events if they affect the Party in question's performance of its obligations under the Contract:

- (a) Acts of God, fire, explosion, flood, lightning, tempest, other extreme weather conditions or similar conditions or events;
- (b) War, civil war, acts of terror, rebellion, riots, demonstrations or similar events;
- (c) Restrictions, regulations (on import or export etc.), embargos, refusal to grant permissions or similar events on part of any governmental authority or international organisation;
- (d) Strikes (including local strikes), lockouts or other industrial actions/trade disputes of whatever nature (whether involving employees of a Party or third parties);
- (e) Breakdown of the Party's IT systems;
- (f) Defaults of a supplier, sub-supplier or any other subcontractor (including, but not limited to, a third party with transport obligations or a consultant) to the Party in question;
- (g) Incompleteness or inaccuracy of information from the other Party or missing/insufficient assistance on part of the other Party in a case where it shall provide it according to the Contract or background law; and
- (h) Situations where changes in economic conditions, prices of raw materials or increased costs etc. has made it extremely onerous to perform for the Party in question. (See also clause 5.)

If the Force majeure event ends, the Party in question shall resume its obligations pursuant to the terms and conditions in the Contract as soon as possible. If a Force majeure event has prevented performance under the Contract for 60 (sixty) days, each Party may cancel the order(s) which is (are) affected by the event.

5. Renegotiation

If, at any time before the agreed delivery of EUROVanillin, there is a substantial change in economic, technological or market conditions which has made or will make it unfair or unreasonable for the Supplier to perform its obligations under the Contract (but which is not a Force majeure event, ref. clause 4 (h)), the Buyer shall, at the Supplier's request hold a meeting with the Supplier in order to agree on a fair adjustment of the terms and conditions of the Contract. If the Parties cannot agree on the said adjustment, the Supplier may, at its option, cancel the Contract or the affected order(s) with immediate effect by sending a Written notice to the Buyer. Such cancellation shall not in itself give the Buyer any right to claim damages for losses.

6. Intellectual Property

The Supplier owns and shall continue to own any and all intellectual property ("IP") connected to the EUROVanillin, i.e. formulas, know how, patents, designs, trademarks, trade names, trade secrets, copyrights and any other IP rights. Nothing in the Contract or in the relationship between the Parties under the Contract shall constitute any grant of licence for the Buyer to use any IP belonging to the Supplier.

7. Confidentiality

A Party shall not, except with the prior consent of the other Party in a Written notice, disclose to third parties any information concerning the Contract or the other Party (technical, economical or otherwise) (i) which is not in the public domain, and (ii) which the Party in question has obtained access to by entering into the Contract ("Confidential Information"). These confidentiality obligations shall survive the termination of the Contract. Each Party may, however, give Confidential Information (i) to authorities according to a binding order/regulation, (ii) to other persons in the same group of companies as the Party in question and/or (iii) to a Party's external advisers (attorneys-at-Law etc.), provided that the receiver of the Confidential Information already has or undertakes the same or similar confidentiality obligation as stated herein.

8. Assignment

A Party is not entitled to assign its rights and/or obligations under the Contract to a third Party without the other Party's prior consent in writing. Provided that a Party does not assign the rights and obligations under the Contract to a competitor of the other Party, the Party in question, however, shall be entitled to assign the rights and obligations under the Contract to a third party in connection with an acquisition, a merger and similar transactions or reorganisations.

9. Governing law and venue

The Contract shall be construed, interpreted and governed in all respects by the laws of Norway. Unless the Parties otherwise agree, all disputes which cannot be amicably settled by the Parties within 2 (two) months, shall be finally settled by arbitration in Oslo according to the Norwegian law on arbitration, dated May 14th 2005 no. 25. The arbitration proceedings and the decision shall be in the English language, and shall be regarded as Confidential Information according to clause 7 herein.