



## General Terms and Conditions of Purchase

### 1. General provisions – Scope – Supplier Code of Conduct

- 1.1 These General Terms and Conditions of Purchase (“Purchase T&C”) of Vivaris Getränke GmbH & Co. KG (“we/us/ourselves”) shall apply exclusively to traders within the meaning of Section 14 of the German Civil Code (BGB), i.e. natural or legal persons (including public-law entities and public-law special funds) acting in the exercise of their commercial or independent professional activity with regard to supplying the goods (“Supplier”).
- 1.2 Our Purchase T&C shall apply exclusively; we do not recognise any terms and conditions of the Supplier’s that conflict with, supplement or deviate from our Purchase T&C unless we have expressly agreed in writing that they should apply. Our Purchase T&C shall also apply if we accept or pay for the Supplier’s delivery without reservation in the knowledge that the Supplier’s terms and conditions conflict with or deviate from our Purchase T&C.
- 1.3 All provisions agreed between the Supplier and ourselves for the purpose of executing a contract must be set out in writing in that contract. Individual provisions agreed between the Supplier and ourselves shall in any case take precedence over these General Purchase T&C. A written contract or our written confirmation shall be authoritative for the content of such provisions.
- 1.4 Our Purchase T&C shall also apply to all future transactions with the Supplier.
- 1.5 The Supplier recognises the content of our Supplier Code of Conduct (as amended), currently available at <https://www.berentzen-gruppe.de/en>.

### 2. Conclusion of contract, contract amendments and offer documents

- 2.1 Orders, contracts and call-offs must be made in writing (for amendments/additions see item 16.4 of these Purchase T&C). E-mail and digital/electronic signatures (e.g. Docu-Sign) shall also satisfy the written-form requirement (including as specified elsewhere in these Purchase T&C). The precedence given to individually agreed provisions (Section 305b BGB) shall remain unaffected for individually agreed provisions in any form.
- 2.2 The Supplier must accept our order and confirm it in writing within a period of one week. Otherwise there is no agreement. Delayed acceptance shall be deemed a new offer requiring acceptance by us. The Supplier must promptly notify us of obvious errors (e.g. typing or calculation errors) and incomplete items in the order so that we may correct them.
- 2.3 If the Supplier prepares an offer on the basis of an enquiry from us, it must adhere to our enquiry exactly or expressly point out any deviations. If the Supplier prepares an offer, a binding contract is made by our express written acceptance/order provided that the offer corresponds to a previous enquiry or we expressly approve any deviations in our acceptance/order. If the order deviates from the offer, item 2.2 above shall apply.

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2.4 We reserve property rights and copyright to illustrations, recipes, calculations, plans and other technical and commercial documents; they may not be made accessible to third parties without our express written consent. They are to be used exclusively for production on the basis of our order; they must be returned to us unbidden after completion of the order. They must be kept secret from third parties; the provisions of part 12 shall additionally apply in this regard.

## 3. Prices – Payment terms – Packaging

3.1 The price stated in the order shall be binding. Unless otherwise agreed in writing, the price shall include delivery “free house” (including any duties, packaging, shipping costs etc.). The Supplier must take back its single-use packaging on request and at its own expense (see also item 3.8).

3.2 All prices shall include the statutory value-added tax if this is not shown separately.

3.3 The Supplier’s invoices must conform to the specifications in our order, in particular including the order number stated there and in all other respects complying with the current applicable legal requirements. The Supplier shall be responsible for all consequences arising from non-compliance with this obligation unless it can prove that it is not responsible for them. Irrespective of this, invoices that have not been properly submitted in accordance with the above provisions shall be deemed to have been received by us only from the time they are corrected.

3.4 Unless otherwise agreed in writing, we will pay the purchase price within 30 days of delivery and receipt of a proper invoice issued in accordance with item 3.3 above with a 3% discount, or net within 45 days of receipt of invoice.

3.5 We will be entitled to rights of set-off and retention to the extent permitted by law.

3.6 The Supplier shall not be authorised to assign claims to third parties arising from the contractual relationship without our prior written consent.

3.7 The Supplier shall be entitled to rights of set-off and retention only if its counterclaim is undisputed by us or has already been adjudicated finally and without possibility of appeal.

3.8 The goods must be packed in such a way as to prevent damage during transport. Packaging materials must be environmentally friendly and used only to the extent necessary in each case. Proper disposal of packaging materials is the responsibility of the Supplier and shall be at the Supplier’s expense; in other respects the obligation to take back packaging materials shall be governed by the applicable legal provisions.

## 4. Delivery period

4.1 The delivery times or dates stated in the order are binding, in accordance with part 2. If the delivery time is not specified in the order and has not been agreed elsewhere, it shall be two weeks from the date of the order. Deadlines run from the date of the order. Goods must be received at the agreed delivery location (if none is agreed, at our registered office in case of doubt) within the delivery period or on the delivery date.

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- 4.2 We only accept incoming goods from Monday to Thursday from 7:00 a.m. to 12:00 noon and from 1:00 to 3:00 p.m., on Fridays from 7:00 to 11:00 a.m., or by prior arrangement.
- 4.3 The Supplier must promptly inform us in writing if circumstances arise or become apparent indicating that the agreed delivery times or deadlines cannot be met, and must obtain our decision on whether to maintain the order. The length of the delay must also be provided if possible. Claims due to delayed delivery shall remain unaffected thereby; this shall apply both in the event that we withdraw from the order by reason of delayed delivery and in the event that we agree to a delivery despite the delay.
- 4.4 In the event of a delay in delivery we are entitled to charge a contractual penalty of 0.3% of the agreed net price of the delayed goods per calendar day of delivery delay, not to exceed 7% of the agreed net price in total. We are entitled to assert a contractual penalty in addition to fulfilment of the order. We reserve the right to assert higher damages, taking into account the contractual penalty and/or other rights.
- 4.5 Unconditional acceptance of the delayed delivery or service shall not constitute any waiver of the claims for compensation to which we are entitled due to the delayed delivery or service. With regard to the contractual penalty provided for in paragraph 4 above, this shall apply in the event of unconditional acceptance insofar as the contractual penalty can still be asserted until the time of final billing.

## 5. Transfer of Risk – Documents

- 5.1 Unless otherwise agreed, the risk of accidental loss or deterioration of the goods shall pass to us upon delivery at the agreed location (DDP per Incoterms 2020) ("Transfer of Risk"), irrespective of the execution of the transport and/or assumption of the transport costs. If the delivery location was not explicitly agreed, our registered office shall be deemed the delivery location.
- 5.2 The Supplier must indicate our exact order number on all shipping documents and delivery notes; if it fails to do so, we will not be responsible for delays in processing.
- 5.3 Deliveries exceeding or falling short of the order and partial deliveries shall be permitted only with our express written confirmation.

## 6. Proper fulfilment of contract – Warranty – Incoming goods inspection

- 6.1 In the event of defects we will be entitled to the statutory claims without restriction, unless otherwise stipulated in these Purchase T&C.
- 6.2 The Supplier warrants in particular that the goods shall have the agreed characteristics and meet the agreed specifications and quality requirements, that all deliveries/services comply with the latest state of the art, the applicable legal provisions and the regulations and guidelines of authorities, trade associations and professional organisations, also with regard to execution and workmanship, accident prevention and environmental protection. If deviations from these

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regulations are necessary in individual cases, the Supplier must obtain our written consent. The Supplier's liability for defects shall not be limited by this consent. If the Supplier has reservations about the type of execution requested by us, the Supplier must promptly so notify us in writing. Further legal requirements for the goods shall remain unaffected thereby.

- 6.3 Regardless of the cause in law, the limitation period for our claims and rights due to defects in the deliveries/services shall be three years from the Transfer of Risk. For portions of the delivery provided as replacements or repaired within the limitation period for our warranty claims, the limitation period shall be reset and recommence from the date the Supplier completely satisfies our claims for subsequent performance. Where applicable, longer statutory limitation periods shall remain unaffected thereby, as shall the provisions on the start of the limitation period, suspension of expiry, suspension and recommencement of limitation periods.
- 6.4 The Supplier must also pay the costs necessary for the purpose of subsequent performance, including but not limited to transport, travel, labour and materials; these shall also include de-installation and reinstallation costs. The Supplier must also pay such costs as are incurred or increase because the object was relocated to a place other than the agreed delivery location.
- 6.5 The Supplier must maintain a quality assurance system that is of appropriate type and scope and at all times conforms to the current state of the art with corresponding outgoing-goods inspection, and must appropriately demonstrate the existence thereof to us on first request. A corresponding quality assurance agreement must be made with us if we so request.
- 6.6 The parties agree that our incoming-goods inspection shall be limited to externally recognisable damage (including but not limited to transport damage) and deviations in quantity in accordance with Section 377 (1) of the German Commercial Code (HGB) insofar as this is relevant for the contract. A defect reporting period of 14 days from delivery of the goods shall apply in this regard.

## 7. Procurement

- 7.1 The Supplier shall have full responsibility for the procurement of the supplies and services required for its deliveries/services, even if it is not at fault (full assumption of procurement risk).
- 7.2 In any case, the Supplier shall be responsible for the supplies and services it procures as it is for its own deliveries or services. This applies in particular with regard to defects.

## 8. Liability of the Supplier – Indemnification – Liability insurance cover

- 8.1 The Supplier shall have unlimited liability in accordance with the statutory provisions, particularly for its own culpable breaches of duty and culpable breaches of duty by its legal representatives, agents and employees.
- 8.2 The Supplier must indemnify us and hold us harmless from damage claims asserted against us by third parties due to defects in the delivery or other breaches of duty by the Supplier, including product liability (see also paragraph 3 below), unless the Supplier is not responsible therefor. Insofar as the Supplier produces its goods or service in accordance with documents provided by us or on

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our express instructions and could not have known that this would infringe third-party property rights, the above indemnification obligation shall not apply. Further claims shall remain unaffected thereby.

- 8.3 If claims are asserted against us based on a breach of official safety regulations or domestic or foreign product liability regulations or laws due to a defect in our product that is attributable to the Supplier's goods, we will be entitled to demand compensation or indemnification from the Supplier for such loss insofar as it was caused by the products delivered by the Supplier. Such loss shall also include the costs of any precautionary product recall. We will inform the Supplier of the content and scope of recall measures to be carried out (including product warnings, etc.), and where possible and reasonable will provide an opportunity for the Supplier to comment. Further legal claims on our part shall remain unaffected thereby.
- 8.4 The Supplier shall also indemnify us and hold us harmless from all claims by our customers/buyers which our customer/buyer asserts on the basis of advertising statements by the Supplier, the Supplier's own upstream supplier (manufacturer within the meaning of Section 4 [1] or [2] of the German Product Liability Law) or an agent or assistant of any of these named entities and which would not exist, or not in this type or amount, without such advertising statement. This provision shall apply irrespective of whether the advertising statement is made before or after our contract was made with the Supplier.
- 8.5 The Supplier must maintain product liability insurance with a lump-sum cover of 10 million Euro per injury/damage claim for the duration of the warranty and any guarantee periods applicable to the products supplied and to provide us with evidence of this on request. The amount of our claims for damages shall not be limited by the sum insured by the liability insurer.

## **9. Third-party rights**

- 9.1 The Supplier guarantees that the delivered item shall be free from third-party rights, in particular free from retention of title (with the exception of an extended retention of title such that the Supplier disposes of it with the consent of the owner), industrial property rights, liens and other encumbrances.
- 9.2 If claims are asserted against us by a third party due to a breach of the guarantee provided for in the preceding paragraph, the Supplier must indemnify us and hold us harmless from such claims upon first written request; we are not authorised to make any agreements with the third party without the Supplier's consent, including but not limited to a settlement agreement.
- 9.3 The Supplier's indemnification obligation shall also extend to all expenses necessarily incurred by us due to or in connection with the third-party claim.

## **10. Quality/improvement management – Documentation – Proof of origin**

- 10.1 The Supplier must constantly review the quality of the delivered goods. He must promptly notify us of any possible improvements. The Supplier must promptly notify us in writing of any recognisable errors in specifications and foreseeable complications.

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- 10.2 If minimum and/or maximum parameter values are specified in an order, then absent a written agreement to the contrary the delivered item or product may not exceed the specified maximum values in any area and may not fall short of the specified minimum values in any case or at any point. This must be ensured and documented by suitable testing and measuring procedures. We may request the results of such testing in writing at any time and at no additional cost.
- 10.3 The scope of delivery shall include, without special charge, the product-specific and/or technical documentation, the certificates of conformity and other documents and certificates required for the subject matter of the contract or its use, in our choice of German or English, as well as the legally required labelling of the parts and the product and/or its packaging.
- 10.4 The Supplier must ensure that exact batch traceability is guaranteed with regard to the delivered items.
- 10.5 Upon request, the Supplier must provide us with the proof of origin in a suitable form for all ordered products. If after requesting the proof of origin the information contained therein is no longer correct, the Supplier must, promptly and unbidden, so notify us and issue a new proof of origin. The same applies to VAT certificates for foreign and intra-Community deliveries.

## 11. **Provided items – Tools**

- 11.1 If we provide parts, substances, containers etc. (collectively “provided parts”) to the Supplier, these shall remain our property and may only be used as intended. Any processing or transformation by the Supplier shall be performed on our behalf (for mixing see paragraph 2 below). If provided parts are processed with other items not belonging to us, we will acquire co-ownership of the new item in the ratio of the value of our item (purchase price plus VAT) to the other processed items at the time of processing.
- 11.2 If provided parts are inseparably mixed with other items not belonging to us, we will acquire co-ownership of the new item in the ratio of the value of the item subject to retention of title (purchase price plus VAT) to the other mixed items at the time they are mixed. If the mixing takes place in such a way that the Supplier’s item must be regarded as the main item, it is agreed that the Supplier shall transfer proportional co-ownership to us; the Supplier shall store the solely owned or co-owned property for us.
- 11.3 Tools provided to the Supplier by us shall remain our property; the Supplier must use the tools exclusively for the manufacture of the goods ordered by us and must otherwise store them properly and securely, free of charge, and return them to us at its own expense at our request, or at the latest upon termination of the business relationship relevant for use of the tools, even absent any request. The Supplier must insure the tools belonging to us at replacement value against fire, water damage and theft at its own expense. The Supplier hereby simultaneously assigns to us all claims for compensation arising from the insurance; we hereby accept such assignment. The Supplier must carry out any necessary maintenance and inspection work on our tools as well as all servicing and repair work at its own expense and in a timely manner. It must promptly notify us of any malfunctions; if it culpably fails to do so, claims for damages shall remain unaffected thereby.

## **12. Confidentiality**

- 12.1 The Supplier must maintain confidentiality with regard to such facts, documents and knowledge which it learns in the course of the business relationship with us containing technical, financial, business, product- or market-related information about our company, our product or our customers, in particular recipes, calculation data, manufacturing instructions, production internals and data of any kind including development or manufacturing features etc., provided we have designated the respective information as confidential or there is an obvious interest in keeping it confidential (collectively "Confidential Information"). The Supplier shall use the Confidential Information exclusively for the purpose of implementing and executing the contractual relationship with us in accordance with the contract.
- 12.2 The disclosure of Confidential Information by the Supplier to third parties is prohibited unless we have given our express written consent in advance.
- 12.3 The confidentiality requirement set forth in paragraph 1 above shall not apply if it can be proven that the Confidential Information at issue:
  - 12.3.1 is the state of the art available to the general public or becomes the state of the art without any action on the part of the Supplier, or
  - 12.3.2 was already known to the Supplier or is made known to the Supplier by a third party authorised to disclose it, or
  - 12.3.3 is developed by the Supplier without our involvement and without utilising other information or knowledge obtained through the contractual relationship, or
  - 12.3.4 must be disclosed due to compulsory legal provisions or court or official orders.
- 12.4 The Supplier shall not analyse or exploit in any other way (including but not limited to reverse engineering) any samples, materials, products, components or knowledge made into other physical form that we make available to it or that come into its possession in any other way.
- 12.5 The parties shall remain at liberty to agree in writing on provisions deviating from and/or supplementing the above provisions as part of a separate non-disclosure agreement. In case of conflict, the non-disclosure agreement shall take precedence over these Purchase T&C.
- 12.6 Documents, data media and other physical forms of Confidential Information which we provide to the Supplier for the performance of the contractual services shall remain our property and, at the latest after the contractual services have been performed, must be returned to us by the Supplier or, at our election, destroyed at the Supplier's expense.



### **13. Use of third parties – Minimum wage**

13.1 The use of third parties (collectively “Subcontractors”) for fulfilment of the contract, including but not limited to the Supplier’s production, shall require our prior written consent; we cannot withhold such consent without an objective reason. Objective reasons shall include but not be limited to cases where the Subcontractor:

- 13.1.1 does not guarantee proper fulfilment of the contractual services in accordance with all provisions agreed between the Supplier and ourselves and all applicable legal requirements,
- 13.1.2 is not sufficiently qualified,
- 13.1.3 does not have the experience, certificates, permits etc. required to perform the services owed or
- 13.1.4 has already violated safety regulations, quality specifications, legal provisions or other specifications set by any of our customers or ourselves in previous business relationships, has violated other contractual obligations including but not limited to lack of performance in line with contractual specifications or has shown a lack of reliability in any other way,

or where there are other reasonable indications that the Subcontractor does not have the necessary qualifications and/or reliability or for other reasons does not appear apt to properly perform the tasks it is to be assigned.

13.2 The Supplier must timely inform us in writing of the full name and registered office of the respective Subcontractor before commissioning the Subcontractor. Furthermore, the Supplier must inform us in writing of the type and scope of the services to be performed by the Subcontractor before engaging the respective Subcontractor. We are entitled at any time to request evidence of the intended Subcontractor’s expertise, capability, reliability and compliance with legal regulations.

13.3 The Supplier shall ensure that its Subcontractors fulfil all obligations arising from these Purchase T&C, the order and all other provisions applicable between the Supplier and ourselves, insofar as relevant to the services to be provided by the Subcontractor, and that they comply with all legal requirements and obligations (such as the minimum-wage law) applicable to their services and the employees assigned in this context. The Supplier must indemnify us and hold us harmless from all damages if claims are asserted against us by public authorities due to the Subcontractor’s failure to comply with legal requirements (e.g. minimum-wage law).

13.4 The Supplier shall be liable to us for Subcontractors it has engaged as if their culpability were its own (Section 278 BGB).

13.5 The Supplier must treat its employees in accordance with the applicable provisions of the German minimum-wage law (“MiLoG”) and in particular must pay them the minimum wage provided for in the MiLoG, particularly if they are assigned to fulfil the contractual obligation to us. The Supplier must provide us with suitable evidence thereof on request. If the Supplier uses Subcontractors in accordance with these Purchase T&C (see above paragraphs), it must also require them to comply



with the provisions of the minimum-wage law, along with the corresponding obligation to furnish evidence, and it must monitor this and also provide us with suitable evidence thereof on request.

#### **14. Export control**

14.1 The Supplier is aware that the export of certain goods may be subject to permitting requirements, for instance due to their type or intended use or final destination. This particularly applies to dual-use goods. The Supplier must strictly observe the applicable export regulations and embargoes for these goods (goods or services, merchandise, software, technology), including but not limited to those imposed by the European Union (EU), Germany or other EU member states and (if applicable) the United States, must inform us in writing in a timely manner before delivery of any prohibitions relevant to the delivery and must indemnify us and hold us harmless from all third-party claims resulting from culpable violation of the aforementioned requirements.

#### **15. Rights of use**

15.1 Insofar as the Supplier's products or services are protected by copyright or other industrial property rights held by the Supplier, the Supplier shall grant us the irrevocable, transferable right unlimited in terms of time, territory and content to use the product or service in all types of use free of charge, including but not limited to reproducing, distributing, exhibiting, modifying and processing or adapting it. We will have the right to use software included in the scope of delivery of the product, including documentation, with the agreed performance features and to the extent necessary for use of the product as provided by the contract, in addition to the right of use in the scope permitted by law (Sections 69a et seqq. UrhG [German Copyright Act]). We may create a backup copy even without express agreement.

#### **16. Applicable law – Jurisdiction and venue – Place of fulfilment – Written form**

16.1 The relationship between the Supplier and ourselves shall be exclusively governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

16.2 In case of any disputes between the Supplier and ourselves arising from or in connection with the contract, including these Purchase T&C, the court with jurisdiction at the location of our registered office shall have exclusive jurisdiction and venue, provided the Supplier is a merchant within the meaning of the German Commercial Code (HGB). At our discretion we may also bring action against the Supplier at its general legal domicile.

16.3 Unless otherwise stated in the order, the place of fulfilment shall be 49740 Haselünne, Germany.

16.4 Changes and amendments to the contract, including these Purchase T&C, must be made in writing in order to be valid. The precedence of individually agreed provisions pursuant to Section 305b BGB shall remain unaffected thereby.