



CONCENTRATES · POWDER · PURÉE · DIRECT JUICE

Rechtssitz - Sede legale:

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GENERAL TERMS AND CONDITIONS OF SALE

INTRODUCTION

The following terms and conditions of sale (“**Terms of Sale**”) are provided by the company Alpenfrucht S.r.l. and set forth the terms under which Alpenfrucht offers to sell and deliver its products, as defined from time to time in Alpenfrucht’s order proposals or in the Buyer’s purchase orders, to its Buyers.

These Terms of Sale, together with the Order Proposal and/or the accepted Purchase Order (as defined below) as well as the Specifications and any other Documents mentioned and/or attached on a case-by-case basis form a binding contract and constitute the entire agreement between Alpenfrucht and the Buyer with respect to the sale and delivery of the Products (“**Contract**”).

These Terms of Sale are updated regularly and can be consulted on our website www.alpenfrucht.com/TermsOfSale.

Upon request, a copy of the signed Contract and/or confirmation of its conclusion will be provided to the Buyer on a durable medium.

Unless expressly agreed to in writing, Alpenfrucht will not recognize nor accept any terms of sale or purchase that differ from these Terms and Conditions.

1. DEFINITIONS

The capitalized terms defined below shall have the specific meaning attributed to them by these Terms of Sale which must be considered when interpreting the provisions of these Terms of Sale:

“**Alpenfrucht**” means our company Alpenfrucht S.r.l. with registered offices in Via Paludi 2/D, 39040 – Cortina sulla Strada del Vino (BZ), Italy, registered with the Register of Companies of Bolzano under number 01582430219, Italian tax identification and VAT number 01582430219, which manufactures and sells liquors, syrups, extracts, fruit juices and the like as well as confectionery and alcoholic products;



“**Affiliate**” means, with respect to any Party, a Person that directly or indirectly controls, is controlled by, or under common control with such Party.

“**Buyer**” means the Person purchasing the Product(s) in accordance with these Terms of Sales.

“**Contract**” means these Terms of Sale, together with the Order Proposal and/or the accepted Purchase Order as well the Specifications and any other documents mentioned and/or attached on a case-by-case basis, including any recitals and exhibits, agreed between the Parties.

“**Confidential Information**” means all information disclosed by a Party to the other Party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, and shall include any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know how, processes, apparatus, equipment and formulae related to the current, future and proposed products and services of each of the Parties, and includes, without limitation, each Party’s respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans and information.

“**Delivery**” means the standard delivery terms referred to in Section 4 of these Terms of Sale and applied by Alpenfrucht to the sale and purchase of its Product(s) or any other delivery terms specified in the Contract.

“**Deliverables**” has the meaning referred to in Paragraph 13.1 of these Terms of Sale.

“**Discloser**” means the Party disclosing Confidential Information.

“**Law**” means any law, statute, regulation, ordinance, decree or other rule of law, as well as any legally binding interpretation thereof which is circulated, issued or promulgated by any Public Authority in Italy or otherwise applicable to Alpenfrucht.

“**Non-Conforming Products**” has the meaning referred to in Paragraph 3.2 of these Terms of Sale.

“**Order Form**” means either the Order Proposal made by Alpenfrucht or the Purchase Order made by the Buyer.

“**Order Proposal**” means the binding contractual offer made by Alpenfrucht to the Buyer containing these Terms of Sale and at least, the name and address of the Buyer, volumes and quantity of the Product(s), the Prize as well as the Specifications.

“**Party**” means Alpenfrucht and/or the Buyer respectively.



“**Person**” means any individual, corporation, association, partnership, estate or any other entity or organization.

“**Price**” has the meaning referred to in Paragraph 6.2 of these Terms of Sale.

“**Price List**” means the rates and quotes, as listed from time to time, applied by Alpenfrucht to the sale of its products and published on Alpenfrucht’s dedicated website or otherwise made available to the Buyer.

“**Products**” means the fruit-based juices, juice concentrates, powders and purées produced and sold by Alpenfrucht.

“**Raw Materials**” means the raw materials and ingredients, including any packaging materials, used in the production of the Product(s).

“**Recipient**” means the Party receiving Confidential Information.

“**Sample Inspection**” has the meaning referred to in Paragraph 3.4 of these Terms of Sale.

“**Specifications**” means all technical and non-technical descriptions, quality requirements, processing specifications and other characteristics of the Product(s) provided by Alpenfrucht or specified in the Contract.

2. SCOPE OF APPLICATION; OFFERS, ORDERS AND BINDING FORCE

- 2.1. These Terms of Sale govern the sale, transfer and assignment of the Product(s) as well as their delivery by Alpenfrucht to the Buyer, in accordance with the provisions of the Contract. Notwithstanding any provisions to the contrary agreed to in writing by Alpenfrucht, these Terms of Sale shall also govern any future transactions between Alpenfrucht and the Buyer.
- 2.2. The Product(s) are ordered by the Buyer either under a Purchase Order or by accepting an Order Proposal (each also an “**Order Form**”), which must contain all necessary information for the proper execution of the order and, at a minimum, must contain name and address of the Buyer, volumes and quantity of the Product(s) to be purchased as well as the date of delivery.
- 2.3. Any of the Buyer’s Purchase Orders must be made in writing in accordance with the provisions of Section 18 below and only become binding and effective towards Alpenfrucht if and when such Purchase Order is expressly accepted in writing by one of its authorized representatives.

- 2.4. All of Alpenfrucht's Order Proposals constitute non-binding contractual offers. Acceptance of the Order Proposal takes place if, Alpenfrucht receives (i) a written order confirmation, containing the same terms and conditions of the Order Proposal; or (ii) an acceptance in writing by the Buyer of the terms and conditions of the Order Proposal. The order confirmation or written acceptance of the Buyer must reproduce, or otherwise expressly accept in their entirety, the terms and conditions set forth in the Order Proposal. In the event, the terms and conditions contained in the order confirmation or written acceptance differ from those of the Order Proposal, they shall be deemed a new contractual proposal and must be accepted in writing by Alpenfrucht in order to become binding.
- 2.5. Except as otherwise specified in the Order Form, Alpenfrucht's standard Product Specifications, prize listings and Delivery terms shall apply.
- 2.6. By accepting an Order Proposal or making a Purchase Order, in the manner specified hereunder, the Buyer agrees to be bound by these Terms of Sale. Alpenfrucht does not agree to any proposed amendment, modification or addition to these Terms of Sale by the Buyer. Any amendments, modifications or additions must be accepted in writing by representatives of Alpenfrucht vested with the necessary powers of representation. Any other statement or writing of the Buyer shall not alter, add to, or otherwise affect these Terms of Sale.
- 2.7. Any communication between the Parties must be in writing via fax, e-mail or certified electronic mail or any other means of communication proving their origin and integrity in accordance with Section 18 below.

3. PRODUCTS; QUALITY AND PACKAGING

- 3.1. Alpenfrucht will produce the Product(s) in accordance with the Specifications in all material respects, if any. Except as otherwise stated in the Contract, Alpenfrucht shall be responsible for procurement and payment of any raw materials (including ingredients and packaging materials, collectively "**Raw Materials**"). The Buyer undertakes to reimburse Alpenfrucht for any Raw Materials which Alpenfrucht has procured and on hand and which are rendered obsolete as a result of a change in the Specifications.
- 3.2. If Alpenfrucht is in breach of the representations set forth in Paragraph 3.1 above, Alpenfrucht shall replace any latent, defective or non-conforming Product(s) ("**Non-conforming Products**") without undue delay and at its own expense with Product(s) that meet the Specifications. The Buyer must provide notice of non-conformity to Alpenfrucht ("**Notice**") in writing within 8 (eight) days of receipt of the Non-conforming Products and, in any case, prior to the Buyer's further manufacturing, blending or other processing of the Product(s). The Buyer's Notice must set forth in sufficient detail the latency, defectiveness or non-conformity of the Product(s) to permit Alpenfrucht to identify and assess the claimed non-conformity.

- 3.3. If the Contract does not contain specific instructions pertaining to the packaging, marking or shipping of the Product(s), Alpenfrucht will prepare and pack the Product(s) in accordance with good commercial practice.
- 3.4. Prior to shipment any batch or lot under this Agreement Alpenfrucht shall make available to the Buyer a sample material for inspection and confirmation of compliance with the Specifications as well as any taste, texture and color requirements agreed upon between the Parties for a particular batch or lot (“**Sample Inspection**”). Upon approval in writing by the Buyer of the sample provided by Alpenfrucht for Sample Inspection, the Product(s) will be considered ready-for-dispatch. The Buyer must issue an approval or refusal within 5 (five) days of receipt of the sample provided for Sample Inspection. If the Buyer fails to issue a response within such time limit, the sample shall be considered approved and the Products will be deemed ready-for-dispatch. Any Product(s) that have undergone satisfactory Sample Inspection, as provided under this Paragraph 3.4, shall be considered to be in full conformity with the Specifications.

4. DELIVERY AND TRANSFER OF RISK

- 4.1. Except as otherwise specified in the Contract, delivery of the Product(s) shall be made EXW Alpenfrucht’s premises pursuant to the Incoterms in their most recent version. EXW under these Terms of Sale shall mean that delivery takes place when Alpenfrucht prepares and places the Product(s) at the disposal of the Buyer at Alpenfrucht’s premises not cleared for export and not loaded on any collecting vehicle (“**Delivery**”), at which time the risk of accidental loss and accidental deterioration of the Product(s) as well as the risk of delay passes to the Buyer. Alpenfrucht may, upon Buyer’s written request, assist the Buyer in loading the collecting vehicle, but shall bare no liability whatsoever in such respect and disclaims any warranty of any kind, whether express, implied statutory or otherwise for the correct loading or safety fittings.
- 4.2. The delivery date set forth in the Contract shall only be deemed approximate and non-binding, except where Alpenfrucht has agreed to be bound by such delivery date in writing. Delivery dates are set on the understanding that all Specifications as well as all technical, logistical and commercial details have already been defined and agreed on in full and that payment either has already been executed or that the Buyer has availability of sufficient funds to meet its payment obligations at all times. If, at any time during the execution of the Contract any of the abovementioned conditions should prove unfounded, Alpenfrucht may extend the delivery date accordingly.

- 4.3. The Parties understand and agree that the Product(s) are perishable goods and that Delivery of the ordered quantities in the manner specified in the Contract is crucial. The Buyer accepts that if Alpenfrucht is unable to deliver the Product(s) in the time and manner agreed upon due to reasons attributable to the Buyer, its representatives, employees or agents and, as a result, the Product(s), in whole or in part, perish or become otherwise unusable to the Buyer, Alpenfrucht may not be deemed in breach of contract for the undelivered and/or unfulfilled quantity and is entitled to receive payment in full with respect to the Contract.
- 4.4. In the event, delivery, dispatch, approval or acceptance of the Product(s) or any part thereof is delayed at the Buyer's request or as a consequence of the Buyer's responsibility, including the Buyer's representatives, employees or agents, Alpenfrucht will store the Product(s) at the Buyer's own risk. Any costs or expenses incurred, or damages suffered in connection with the storage of the Product(s) will be charged to the Buyer.
- 4.5. If Delivery of the Product(s) is executed in one or more lots or the Contract with the Buyer governs multiple deliveries over a certain period of time, failure to perform or delay in performance of a single delivery obligation, shall not entitle the Buyer to terminate the entire Contract.

5. TRANSFER OF TITLE

- 5.1. All rights, title and interest to and in the Product(s) will pass from Alpenfrucht to the Buyer at the moment of transfer of risk, as specified in the Delivery terms, without prejudice to the Buyer's right of inspection provided under Section 3.2 of these Terms of Sale.

6. PRICE AND TERMS OF PAYMENT

- 6.1. Alpenfrucht will invoice the Buyer within 30 (thirty) days from the day the Product(s) are ready for Delivery or in accordance with the payment terms specified in the Order Form. Invoices must be paid by wire transfer of funds or other form of payment acceptable to Alpenfrucht (i) no later than net 30 days from the invoice date (ii) before the Buyer takes delivery of the Products, whichever comes first.
- 6.2. Except as otherwise agreed in writing, the price contained in the Order Form or listed on the Price List ("**Price**") refers exclusively to the purchase price of the Product(s) and does not include any costs, fees, charges, duties, levies or taxes and incidental expenses, such as commission, packaging, transport and insurance costs.
- 6.3. If any invoiced amount is not received by Alpenfrucht by the due date, then without limiting Alpenfrucht's rights or remedies, (i) those charges may accrue late interest of the outstanding balance at the maximum rate permitted by law and (ii) may condition future Order Forms on payment terms shorter than those specified in these Terms of Sale.

- 6.4. The Buyer shall not be entitled and expressly waives its right to set off any claim arising under the Contract and/or in connection thereto against any payment obligations under the Contract.

7. TAXES AND DUTIES

- 7.1. Except as otherwise agreed in writing, Alpenfrucht shall not be responsible for export and/or import clearance, duties and taxes for the Product(s) and shall not be deemed “exporter of record”. Taxes payable on the Product(s) shall be allocated to each Party as specified in the Delivery terms.

8. REPRESENTATIONS AND WARRANTIES

- 8.1. Each Party represents that it has validly entered into this Agreement and has the legal power to do so.
- 8.2. Alpenfrucht represents and warrants that, **at the time of pick up** in accordance with the applicable Delivery terms, all Product(s) shall, in all material respects: (i) not violate any applicable Laws; (ii) be free of any material defects and chemicals prohibited at the time of Delivery or contain only such quantities of chemicals as is permitted under applicable Law (iii) be free from any third party rights and (iv) meet the Specifications, as outlined in the Contract.
- 8.3. Except as expressly provided herein and to the fullest extent permitted by law, Alpenfrucht does not give any warranty of any kind, whether express, implied, statutory or otherwise, and specifically disclaims all warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement. Samples provided free of charge are provided “as is” and as available and are free of any warranty whatsoever.

9. LIMITATION OF LIABILITY

- 9.1. Subject to the exclusion of consequential and related damages below, Alpenfrucht’s liability with respect to any single incident arising out of or related to the Contract (whether in contract or tort or under any other theory of liability) shall not exceed the lesser of the direct damages suffered or the amount paid by the Buyer for the Product(s) involved in the relevant incident, provided that in no event shall the aggregate liability of Alpenfrucht together with its Affiliates, directors, officers, employees or agents (whether in contract or tort or under any other theory of liability) arising out of or in connection with the Contract exceed the total amount paid by the Buyer under the Contract.
- 9.2. Alpenfrucht shall, to the fullest extent permitted by law, in no event have any liability to the Buyer under or in relation to the Contract, whether in contract, tort or under any other theory of liability for
- i) any financial damages as a result of loss or damage to property, economic loss, costs of replacement services, loss of profits, loss of revenue, loss of orders, loss of goodwill, and/or loss resulting from

damage to image or reputation in each case whether direct or indirect, or

ii) any indirect or consequential loss or damage arising from or in connection with the Contract,

however caused and whether or not such losses are foreseeable, even if Alpenfrucht has been advised or is otherwise aware of the possibility of such losses in advance.

10. INDEMNIFICATION

10.1. The Buyer shall defend, indemnify and hold harmless Alpenfrucht, its Affiliates, representatives, directors, officers, employees and agents against all losses, claims, damages, liabilities, penalties, costs and expenses including reasonable attorney's fees, they should incur as a result of, or in connection with (i) a breach by the Buyer of any of its obligations under the Contract or (ii) the Buyer's unlawful use of the Product(s).

11. FORCE MAJEURE

11.1. Neither Party shall be held liable for any total or partial non-performance or delay in performance of its obligations under the Contract if such non-performance or delay in performance is due to an Event of Force Majeure.

11.2. The Party affected by an Event of Force Majeure shall notify the other in writing without undue delay and in any case within 48 (fortyeight) hours after the Event of Force Majeure has occurred, specifying, if possible, the expected duration of the event and providing, if possible, any documentation or other evidence proving the existence of the event, on pain of inapplicability of this Force Majeure provision; a further notification shall be made as soon as the Event of Force Majeure has been resolved, after which any suspended contractual obligations shall resume and become effective again.

11.3. Each Party shall make efforts to keep at a minimum any disruption and damages caused by the Event of Force Majeure, and in good faith attempt to reach an agreement on the remedial actions to be adopted in response to such event.

12. INSURANCE

12.1. Without limitation to any of its obligations under the Contract or applicable law and regulations, the Buyer shall, at its own expense, conclude and maintain in full force and effect throughout the entire term of the Contract a general third party liability insurance with a reputable, duly-qualified insurance company for any incident or series of incidents covering the business operations of the Buyer, for a minimum insured amount of Euro 2.000.000,00 (twomillion/00) per occurrence and an aggregate insured amount of Euro 10.000.000,00 (tenmillion/00). Upon simple written request of Alpenfrucht, the Buyer shall make available to Alpenfrucht a certificate of insurance issued by the relevant insurance



company valid for the duration of the Contract.

13. INTELLECTUAL PROPERTY

- 13.1. The Buyer acknowledges that all rights, title and interest, including all related intellectual property rights, in and to the Specifications, formulas, recipes, processes, designs, documents, materials and reports as well as any other related deliverables which are made, conceived, reduced to practice or authored by Alpenfrucht, its Affiliates, employees, representatives or agents or which are derived from the use or possession of Alpenfrucht's Confidential Information (collectively, "**Deliverables**") shall remain the exclusive property of Alpenfrucht and its Affiliates. Except as expressly agreed to in writing, Alpenfrucht and/or its Affiliates shall own all modifications, improvements and enhancements made to the Deliverables, whether or not such modifications, improvements and/or enhancements were made on the basis of any feedback, ideas, suggestions or information provided by the Buyer.
- 13.2. Except as expressly set forth in the Contract, nothing herein shall grant the Buyer any right, title or interest in or to the Deliverables.
- 13.3. Notwithstanding anything to the contrary in the Contract, the Buyer obtains no license or other right to use or exploit the Deliverables of Alpenfrucht or its Affiliates.

14. CONFIDENTIALITY

- 14.1. Each Party retains all ownership in and to its Confidential Information. Each Party, as Recipient, undertakes vis-à-vis the other Party, as Discloser, to use the Confidential Information solely in connection with and for the purposes of the Contract and agrees not to use, disseminate, or in any way disclose such Confidential Information to any person, firm or business, except as otherwise authorized in writing by the Discloser. Each Party, as Recipient, will use the same degree of care that it uses to protect the confidentiality of its own Confidential Information, but in no case less than reasonable care. Access to Confidential Information each Party, as Discloser, shall be limited to those of its and its Affiliates' employees and contractors (including, without limitation, legal counsel, financial auditors and accountants) who need access for such purposes as are consistent with the Contract and who have signed or are otherwise bound by confidentiality commitments with the other Party, as Recipient, containing protections not materially less protective of the Confidential Information than those provided under these Terms of Sale.
- 14.2. The confidentiality obligations of each Party, as Recipient, with respect to any portion of the Confidential Information of the Confidential Information of the other Party, as Discloser, shall not apply to such portion that such Recipient can document (i) was in the public domain at the time such portion was communicated to such Recipient through no fault of such Recipient in breach of the Contract; (ii) was rightfully in the Recipient's possession free of any obligation of confidentiality at or subsequent to the

time such portion was communicated to the Recipient by the other Party, as Discloser; (iii) was developed by employees or agents of such Recipient independently of and without knowledge of any of the Discloser's Confidential Information.

- 14.3. A disclosure of Confidential Information of each Party, as Discloser, either (i) in response to a valid order by a court or other governmental body, (ii) otherwise required by law, or (iii) necessary to establish the right of either Party under the Contract, shall not be considered to be a breach of each Party's confidentiality obligations under these Terms of Sale or a waiver of confidentiality for other purposes, provided, however, the Recipient provides prompt prior written notice thereof to the other Party, as Discloser, if legally permitted to enable such Discloser to seek a protective order or otherwise prevent the disclosure of Confidential Information, provided that the Recipient limits the disclosure to the requisite minimum and gives notice about the proprietary and confidential nature of the Confidential Information at the time of disclosure.

15. TERM AND TERMINATION

- 15.1. The Contract shall remain in force as specified in the relevant Order Form.
- 15.2. Each Party may terminate the Contract for cause (i) upon 30 days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period.
- 15.3. Without prejudice to Alpenfrucht's right to claim damages, Alpenfrucht shall be entitled to immediately terminate the Contract for serious breach, if the Buyer:
- defaults on its payment obligations under the Contract;
 - becomes the subject of a petition in bankruptcy or any other proceedings relating to insolvency, receivership, liquidation or assignment for the benefit of creditors;
 - violates its obligation of confidentiality under Section 14 of these Terms of Service;
 - violates the non-assignment clause of Section 16 of these Terms of Service.
- 15.4. In the event of expiry or termination of the Contract, for any reason, the Buyer shall pay Alpenfrucht (i) for any Product(s) Alpenfrucht produced or was in the process of producing for the Buyer before the effective date of the termination or expiration, as well as (ii) any unique and otherwise non-usable Raw Materials purchased for processing under the Contract with the Buyer. The Buyer must take delivery of all such Product(s) and Raw Materials at Alpenfrucht's premises within 30 (thirty) days of the expiration or termination date. Alpenfrucht may elect to charge the Buyer storage fees or dispose of any Product(s) and Raw Materials after such term, at the Buyer's expense.

16. NO ASSIGNMENT

- 16.1. The Buyer may not assign the Contract or any of its right or obligations thereunder, whether by law or otherwise, without Alpenfrucht's prior written consent.
- 16.2. If the Buyer is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of a direct competitor of Alpenfrucht, the latter may terminate this Agreement upon written notice.

17. GOVERNING LAW AND JURISDICTION

- 17.1. These Terms of Sale, the Contract, Order Forms and Documentation shall be governed by and construed in accordance with the law of the Republic of Italy, without regard to its conflicts of law provisions. The 1980 Vienna Convention on the sale of goods shall not apply. The Buyer waives any rights it may have to have these Terms of Sale of the Contract written in the language of its country of origin, and the English version shall prevail.
- 17.2. Any controversy or claim based on any matter arising out of or in connection with these Terms of Sale, the Contract (including its validity, effectiveness, interpretation, enforceability and termination) and/or the transactions contemplated thereunder shall be finally settled before the Court of Bolzano, Italy, as the exclusive venue of jurisdiction.

18. COMMUNICATION

- 18.1. Any notice required or permitted under these Terms of Sale and/or the Contract must be made in writing, by fax, mail or email or any other means of communication proving their origin and integrity, to the addresses indicated in the Order Forms or to any different address and/or fax number that each Party may communicate during the course of the Contract.

19. MISCELLANEOUS

- 19.1. If any part or provision of these Terms of Sale or the Contract is held by a court of law to be illegal, invalid or unenforceable, (i) that provision shall be deemed amended in such a way as to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provisions shall not be affected or impaired thereby.
- 19.2. The Parties are independent contractors. The Contract does not create a partnership, franchise, agency, joint venture, fiduciary or employment relationship between the Parties. Each Party will be solely responsible for payment of all compensation owed to its employees, including employment related taxes and social security contributions.



19.3. No failure or delay by either Party to exercise any right under these Terms of Sale or the Contract will constitute a waiver of that right.

19.4. The Contract is the entire agreement between Alpenfrucht and the Buyer regarding the sale and delivery of the Product(s) and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

Date and place

Alpenfrucht S.r.l.

Date and place

The Buyer

Pursuant to and for the purposes of Articles 1341 and 1342 of the Italian Civil Code the Buyer, after careful examination, expressly and specifically approves the contractual clauses referred to below:

Sections 3 (Products, Quality and Packaging), 4 (Delivery and Transfer of Risk), 6 (Price and Terms of Payment), 8 (Representations and Warranties), 9 (Limitation of Liability), 10 (Indemnification), 12 (Insurance), 14 (Confidentiality), 15 (Term and Termination), 16 (No Assignment), 17 (Governing Law and Jurisdiction)

Date and Place

The Buyer
