

Innutri AG

Wagistrasse 4 | CH-8952 Schlieren | Schweiz

www.innutri.ch | Phone: +41 44 731 93 16

E-Mail: info@innutri.ch

UID: CHE-116.317.880

**GENERAL TERMS AND CONDITIONS OF CONTRACT AND BUSINESS (GENERAL TERMS AND CONDITIONS)****1. GENERAL**

- 1.1 These General Terms and Conditions ("GTC") govern the offer, sale and delivery of all goods and/or services (hereinafter jointly referred to as "product(s)") by or on behalf of Innutri AG, and its affiliated companies (hereinafter referred to as "Innutri") to a customer (hereinafter referred to as "customer") and apply to all transactions between Innutri and the customer.
- 1.2 By contracting on the basis of these General Terms and Conditions, the customer agrees to their applicability to all future business transactions, even if this is not explicitly stated.
- 1.3 Any terms and conditions of a contracting party shall be deemed to be rejected by Innutri and shall only be valid if expressly accepted by Innutri in writing. In particular, the performance of deliveries or services by Innutri does not constitute acceptance of the terms and conditions of the contracting partner.
- 1.4 Additions or amendments to these terms and conditions shall only be valid if they have been set out in writing. In the event of deviations or contradictions the provisions of individual written agreements shall take precedence over these GTC.
- 1.5 The nullity or invalidity of individual provisions of these GTC does not mean that other provisions of these GTC and/or the contractual relationship are null and void.
- 1.6 The current and binding General Terms and Conditions of Business can always be found on the Internet at: www.innutri.ch in the imprint.
- 1.7 All electronic communication between Innutri and the customer shall have the validity of originals and shall be deemed to be a "written document" between the parties. The electronic communication system used by Innutri shall serve as the sole proof of the content, time of delivery and time of receipt of such electronic communication.
- 1.8 Unless otherwise agreed in writing in an individual contract, the respective statutory seat of "Innutri" shall be the place of performance.
- 1.9 Unless otherwise specified by Innutri, offers made by Innutri in any form whatsoever are not binding, but are merely an invitation to the customer to place an order. All offers made by Innutri are revocable and subject to change without notice. Orders are only binding after written confirmation by Innutri ("order confirmation"). Innutri is entitled to reject orders without giving reasons.
- 1.10 Price offers for estimated or forecast quantities are subject to increase if the quantities actually purchased during the specified period are lower than the estimated or forecast quantities.
- 1.11 Due to the manufacturing process, over- or underdeliveries of plus/minus 10% (ten percent) of the ordered quantity (in sales units) are possible and shall be deemed to be fulfilled compared to the quantity confirmed in the order confirmation.
- 1.12 Each delivery is an independent transaction in itself; if a delivery is missed, this has no consequences for other deliveries.

2. PRICES

- 2.1 The prices and currencies of Innutri's products are as stated in the order confirmation. Unless otherwise agreed, prices include standard packaging (cans or bulk), but exclude value added tax or other similar applicable taxes, duties, fees or charges levied on the products or their delivery in a particular jurisdiction (hereinafter "taxes"). All taxes levied in connection with the sale of the products shall be borne by the customer and shall either be added to the individual invoices or invoiced separately to the customer by Innutri. Any discount granted by Innutri shall only apply to the delivery expressly mentioned in the order confirmation.

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- 2.2 Unless the prices in the order confirmation have been marked as fixed prices by Innutri, Innutri shall be entitled to increase the prices of products still to be delivered, if the factors determining the cost price are subject to increase. Such factors include in particular raw and auxiliary materials, energy, products purchased by Innutri from third parties, wages and salaries, social security contributions, official charges, freight costs and insurance premiums. Innutri shall inform the customer of such increases, which shall not exceed the increase in the factors determining the cost price.
- 2.3 In the event of over- or under-delivery due to manufacturing, the price or confirmed order value shall be increased or reduced in accordance with the quantity actually delivered.
- 2.4 Unless otherwise agreed, the customer shall generally bear all costs incurred in the pre-press stage or in connection with the dispatch of samples, receipts and the like.

3. PAYMENT AND PAYMENT TERMS GRANTED TO THE CUSTOMER

- 3.1 Unless otherwise stated in the order confirmation:

(a) 50% of the order value confirmed in the order confirmation must be paid as a deposit immediately after receipt of the order confirmation or the corresponding invoice. Innutri will deduct this down payment from the final invoice due after delivery of the products. In the case of orders, the order confirmation will only become valid upon transfer of the deposit.

(b) final payment must be made on a net cash basis, upon receipt by Innutri, no later than 20 (twenty) days after the date of the invoice (payment date) from Innutri. All payments shall be made without any deductions for taxes, set-off or other counterclaims, except for deductions for undisputed or enforceable counterclaims. This date of payment must also be adhered to if transport, delivery or acceptance of deliveries is delayed or rendered impossible (e.g. if the customer is in default of acceptance).

- 3.2 Time is an essential contractual criterion for the payment of products. Innutri may, without prejudice to other rights of Innutri, charge interest on overdue payments at the rate of 12% (twelve percent) per annum, calculated on a daily basis from the due date until full payment of all outstanding amounts. All costs and expenses incurred by Innutri for the collection of overdue receivables (in particular reasonable attorney's fees, expert's fees, court costs and other procedural costs) shall be borne by the customer.
- 3.3 If payment is not made within the agreed payment period, a reminder including reminder fees will be sent. For invoice amounts of up to EUR 10,000, reminder fees of EUR 30 will be charged. From an invoice amount of above EUR 10,000, reminder charges of EUR 50 will be levied. The amount of the dunning charges will be applied in all currencies.
- 3.4 Payments made by customers will first be used to pay court costs and out-of-court expenses as well as accrued interest and then, irrespective of any instructions to the contrary from the customer, will be credited to the oldest claim.
- 3.5 Innutri must be notified of any objections to an invoice no later than 10 (ten) days after the invoice date. After this period the invoice is deemed to have been accepted by the customer.

If the customer is in default of payment, Innutri may suspend further deliveries until the outstanding debt has been settled and at the same time demand full advance payment. Furthermore, Innutri is entitled to the options set forth in Art. 107/108/109 of the Swiss Code of Obligations.

- 3.4 The customer is not permitted to set off claims of Innutri against his own claims.

Changes in the financial circumstances of the customer (such as default of payment, payment difficulties, suspension of payments, death or the initiation of debt collection proceedings and the conduct of significant civil proceedings against the customer), which give justified cause to fear that the customer will not fulfil his obligations to Innutri on time, entitles Innutri to demand appropriate securities or advance payments; if the customer fails to comply with such a demand within the set period, Innutri is entitled to withdraw immediately from any contract with the customer, with full indemnification by the customer. In such a case, all claims by Innutri shall become due immediately.

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**4. DELIVERY AND ACCEPTANCE**

- 4.1 Unless otherwise specified in the order confirmation, all product deliveries shall be FCA. The term FCA shall have the meaning assigned to it in the most recent version of the INCOTERMS published by the International Chamber of Commerce in Paris at the time of the order confirmation. Unless otherwise agreed, the "plant" is identical with the domicile of the packer of Innutri's products at the time of entry into force of these GTC in 31785 Hameln, Germany.
- 4.2 The delivery date shall be extended appropriately if:
- (a) the information (e.g. customer-specific raw materials, artwork, "good for printing", packaging materials, etc.) required for the execution of the order is not received by Innutri in time, or if it is subsequently changed by the customer;
 - (b) payment deadlines are not met, letters of credit are opened too late, or required import licenses are not received by the supplier in time;
 - (c) obstacles (see clause 11) occur, which Innutri cannot avert despite exercising due care, regardless of whether they occur at the supplier, the customer or a third party.
- 4.3 If the customer is in default of acceptance and/or payment, Innutri is entitled to demand 1% of the purchase price per month from the customer for storage. The risk of loss or damage to the goods shall pass to the customer upon default.

5. CANCELLATION

- 5.1 The unlawful non-acceptance or rejection of the products by the customer or his cancellation of the order confirmation entitles Innutri to demand compensation from the customer for the following, in addition to compensation for other damage caused by these actions:
- (a) in the case of products which Innutri cannot reasonably be expected to sell to third parties, the price of such products as stated in the order confirmation, or
 - (b) in the case of products that can be resold by Innutri, damages amounting to 50% (fifty percent) of the price listed for the products in the order confirmation as a penalty, unless the customer can prove that the actual damage suffered by Innutri is less than 50% of the price or that no damage at all has occurred.

6. VERIFICATION AND COMPLIANCE WITH SPECIFICATIONS

- 6.1 Complaints about products must be made in writing and must be received by Innutri no later than 7 (seven) days after delivery in the case of defects or shortfalls that can be detected upon appropriate inspection after delivery, otherwise no later than 7 (seven) days after the date on which other complaints (e.g. hidden defects) are or should have been detected, in any case no later than the expiry of the shelf life of the products. The use of the products shall be deemed to be an unconditional acceptance of the products on the date of delivery and a waiver of all claims for such products.
- 6.2 The determination of whether or not the delivered products comply with the specifications shall be carried out exclusively by Innutri by analysing samples or the records kept by Innutri, taken from batches or production series in which the products were produced in accordance with the analysis methods used by Innutri. Analyses carried out by the customer can only lead to a complaint about the delivered goods if the same analyses have already been requested by the customer in the context of the release by means of a Certificate of Analysis (CoA). In the event of disagreement between the parties as to the quality of a batch or production series of the products delivered by Innutri to the customer, Innutri shall provide representative samples of the batch or production series in question to an independent laboratory acceptable to the customer on reasonable terms to determine whether the batch or production series in question meets the specifications. The results of this analysis shall be binding on the parties, with the party whose position could not be proven bearing the associated laboratory costs.

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- 6.3 Defects in any part of the products shall entitle the customer to reject the entire delivery of the products only if the customer cannot be reasonably expected to accept delivery of the remaining non-defective parts of the product delivery. Complaints, if any, shall not affect the customer's obligation to pay in accordance with the provisions set forth above.

7. TRANSFER OF OWNERSHIP AND RISK

- 7.1 The transfer of risk of the products to the customer shall be in accordance with the applicable Incoterms 2010, and unless otherwise agreed in accordance with INCOTERMS 2010 or other commercial clauses, transportation, even if organized by Innutri, shall be at the expense and risk of the customer. The transport company shall confirm receipt and condition of the goods received on the delivery note. In any case, the customer is obliged to store the products delivered to him under the best possible conditions in accordance with the usual and intended manner for the product in question (e.g. sealed storage, packing of bulk goods within the prescribed time, etc.).
- 7.2 Ownership of the Products shall not pass to the customer until Innutri has received payment in full for the products, including costs such as interest, fees, expenses, etc.; prior to this, Innutri shall retain full legal and beneficial ownership of the products.
- 7.3 Upon termination (see below) Innutri is entitled, without prejudice to any other rights, to demand the immediate return of the products or to repossess those products for which Innutri has retained title.
- The customer is obliged to cooperate in measures necessary to protect Innutri's property. All formalities necessary for the establishment and maintenance of the retention of title are carried out at the customer's expense.
- 7.4 The customer may only sell the reserved goods in the ordinary course of business. The customer shall only be entitled and authorized to resell the goods subject to retention of title on condition that the claims arising from such resale are transferred to Innutri. Upon ordering or countersignature of an order confirmation by the customer, claims arising from the resale of the reserved goods or any insurance claims due to damage to or theft of the reserved goods shall be assigned to Innutri. The customer is not entitled to dispose of the goods subject to retention of title in any other way, in particular he may not pledge the goods subject to retention of title or assign them as security. The customer is only authorised to collect the assigned claims himself with the express consent of Innutri.

8. LIMITED WARRANTY

- 8.1 Unless otherwise agreed, warranty shall be based on the specification of the product apparent in the non-conformity of the products at Innutri and, if applicable, the return of the order confirmation. Innutri cannot provide any binding guarantee for the shelf life and stability of the active ingredients. Innutri guarantees that the declaration of ingredients and nutritional values is correct to the best of its knowledge and belief and that the product is manufactured in accordance with the recipe and manufacturing instructions assigned to the product.
- 8.2 Innutri only warrants that the products meet the specifications on the day of delivery. If and to the extent that the products are in breach of this warranty and this is determined accordingly, Innutri may, at its own discretion, within a reasonable period of time, repair or replace the products free of charge for the customer or issue a credit note for these products in the amount of the original invoice price. Innutri's obligation is thus limited exclusively to repair or replacement of the products or to issue a credit note for the products.
- 8.3 Innutri's obligation to repair, exchange or issue a credit note is subject to receipt of timely notification of the alleged products.
- 8.4 The above warranty is exclusive and in lieu of all other warranties, representations, conditions or other terms, express, implied, statutory, contractual or otherwise, including but not limited to warranties of merchantability, fitness for a particular purpose, or non-infringement of any intellectual property right to which the Products are subject.

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- 8.5 If a customer provides Innutri with individual or all ingredients or raw materials for the manufacture of a product, Innutri shall become the sole owner of the product created by it by processing the ingredients or raw materials. The customer accepts that the processing of his ingredients or raw materials may result in a loss of more than 10% of the product.

9. LIMITED LIABILITY

- 9.1 Innutri's liability for all claims for compensation arising from or in connection with the products and their use is limited per occurrence to the direct damage suffered by the customer and in no case exceeds the sales value of the defective batch of products delivered to the customer.
- 9.2 Under no circumstances shall Innutri be liable to the customer or others for any specific damage, indirect damage, incidental damage, consequential or punitive damage, for losses, costs and expenses, in particular for loss of goodwill, loss of sales or profits, delivery delays, work stoppages, loss of production, deterioration of other goods or damage caused by other causes, whether such damage is due to breach of warranty, breach of contract, misrepresentation, negligence or otherwise.
- 9.3 If products manufactured by Innutri are packaged by the customer or by third parties, Innutri excludes any liability for any damage to the product. In particular, the customer shall himself ensure that the packer is carefully selected, that the products are properly packed, that optimum conditions are provided during transport to the packer and during the packing process, which do not impair the products, and that the quality of the packaging material is perfect.
- 9.4 The risk for the sale of ordered goods lies solely with the customer. Innutri shall not be liable for recommended retail prices. Innutri is not obliged to take back unsold goods from the customer or to make marketing contributions to promote sales of ordered goods to the customer.

10. HIGHER POWER

- 10.1 Neither party shall be liable in any way to the other for any damages, losses, costs or expenses arising out of or in connection with any delay, restriction, failure or delay in performing any obligation to the other party caused by any circumstances beyond its reasonable control, including, without limitation, natural disasters, laws and regulations, acts of government, orders or rulings of any court, earthquake, flood, fire, explosion, war, Terrorism, riots, sabotage, accidents, epidemics, strikes, lock-outs, go-slow strikes, labour disputes, difficulties in obtaining the necessary labour or raw materials, lack or failure of transport facilities, failure of plant or essential machinery, emergency repairs or maintenance, failure or shortage of power and water supplies, delays in the delivery of materials supplied by suppliers or subcontractors or defects therein ("force majeure").
- 10.2 Upon the occurrence of a force majeure event, the affected party shall promptly notify the other party in writing, stating the reasons for the event and how it affects the performance of its obligations under the order confirmation. In the event of a delay, the obligation to deliver shall be suspended for a period equal to the loss of time caused by the Force Majeure. However, if a force majeure event continues or is expected to continue for a period of more than 60 (sixty) days after the agreed delivery date, either party shall be entitled to cancel the affected part of the order confirmation without any obligation to the other party.

11. CHANGES AND INFORMATION, EXEMPTION FROM LIABILITY

- 11.1 Unless it has been agreed that the specifications shall remain unchanged for a certain period of time or for a certain quantity of products, Innutri reserves the right to change the specifications and/or the production of the products and to replace (with another) material used in the production and/or production of the products at any time without notice. The customer acknowledges that data in catalogues, product data sheets and other descriptive publications distributed by Innutri or published on its website may be subject to occasional changes without notice.

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11.2 With regard to the products and the use of the same by the customer, the customer must use and rely exclusively on his own competence, know-how and judgement. Any advice provided by Innutri shall not entail any further obligations. The customer shall indemnify Innutri against all damages, losses, costs, expenses, demands, claims and any liability (including product liability) arising out of or in connection with the products and their use by the customer.

12. COMPLIANCE WITH LAWS AND STANDARDS

12.1 The customer acknowledges and confirms that the use of the products may be subject to requirements or restrictions under certain laws, regulations, rules, norms or standards, including but not limited to all applicable anti-corruption and anti-bribery laws and regulations, and international trade regulations, including but not limited to export bans, import and export controls and sanctioned party lists.

12.2 Customer expressly warrants that employees, representatives, agents or sub-contractors of supplier with respect to

- (a) legal or natural persons, including civil servants or other public officials or government-run businesses; or
- (b) not to accept, promise, offer or grant, directly or indirectly, (b1) any improper advantage or (b2) to enter into any contractual relationship in violation of applicable laws and standards.

12.3 Customer shall be solely responsible for ensuring compliance with all laws and standards in connection with its intended use of the products and for obtaining all necessary permits, approvals and releases for such use.

13. INDEPENDENT CONTRACTORS

13.1 Innutri and the customer are independent contractors; the relationship created by this agreement shall not be deemed to be a relationship between the customer and the contractor.

14. NON-TRANSFER AND CHANGE OF CONTROL

14.1 Neither party may assign or transfer any rights or obligations under a confirmed order without the prior written consent of the other party, but either party may transfer such rights or obligations to any of its affiliates or to any third party acquiring all or substantially all of its assets or business in connection with the products.

14.2 Innutri shall be entitled to terminate an order confirmation with immediate effect if, during the term of the confirmed order, a person or group of persons who has no connection with the persons controlling the customer at the time of the order confirmation acquires control of the customer through the ownership of voting securities or otherwise. The customer shall inform Innutri of such a takeover within 10 (ten) days at the latest. Innutri may exercise its right to terminate the order confirmation by written notice to the customer no later than 10 (ten) days after the date of receipt of such notice.

15. INTERRUPTION AND TERMINATION

15.1 In cases where the customer fails to fulfil his obligations to Innutri and fails to provide sufficient security to Innutri for his performance prior to the scheduled delivery date, if the customer becomes insolvent, is unable to pay his debts when due, goes into liquidation (except for the purposes of reorganisation or merger), if insolvency proceedings are initiated by or against the customer, if a trustee, administrator or asset manager is appointed for all or a substantial part of the customer's assets, if the customer enters into an out-of-court settlement, makes an assignment in favour of his creditors, or violates laws and standards, then Innutri may, without prejudice to any other rights it may have, immediately by written notice:

- (a) demand the return of all delivered products that have not yet been paid for and repossess them, with all costs of recovering the products being borne by the customer, and/or
- (b) suspend the performance of the outstanding delivery of products or cancel the order confirmation for such products, unless the customer makes an advance payment in cash for such products or provides sufficient security for the payment of such products to Innutri.

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15.2 In any of the cases listed above, all outstanding claims of Innutri in respect of products delivered to the customer and not repossessed by Innutri shall become due and payable with immediate effect.

15.3 The customer is obliged to obtain all necessary permits and customs tariff numbers (according to INCOTERMS 2010) from the competent authorities etc. for the import and distribution of Innutri's products.

15.4 In case of doubt, Innutri's obligation to deliver shall be suspended until the customer has provided proof that the relevant regulations and permits have been fulfilled or issued.

15.5 The customer is responsible for clarifying and applying the correct customs tariff number. Otherwise Innutri disclaims any liability for incorrect customs tariff numbers.

16. WAIVER CLAUSE

16.1 Failure by Innutri at any time to enforce any provision of the General Terms and Conditions shall not constitute a waiver by Innutri of its right to act or enforce such provision or condition, nor shall the rights of Innutri be affected by any delay, default or failure to enforce such provision. The waiver of a breach of the customer's obligations by Innutri shall not be deemed to be a waiver of any prior or subsequent breach.

17. PARTIAL INVALIDITY AND CONVERSION

17.1 If any provision of these General Terms and Conditions is found to be invalid or unenforceable, the validity or enforceability of the remaining provisions between the parties shall in no way be affected and the provision in question shall be severed from the others. Any provision deemed invalid or unenforceable shall be amended to the maximum extent permitted by law to reflect the legal and economic intent of the original provision.

18. LIMITATION OF PROCEEDINGS

18.1 Unless otherwise provided in this document, a customer may not commence proceedings unless he has given Innutri prior written notice of the alleged claim against Innutri no later than 30 (thirty) days after the defendant event first comes to his attention, and unless the customer commences proceedings no later than 12 (twelve) months after such notice.

19. APPLICABLE LAW AND JURISDICTION

19.1 The rights and obligations of the parties arising out of or in connection with the order confirmation and/or the GTCs shall be governed by and construed in accordance with Swiss law, without regard to its conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall not apply.

19.2 The parties agree that all legal proceedings or proceedings instituted by a party shall be brought exclusively before the competent court at the domicile of Innutri, without prejudice to the right of Innutri to bring the matter before any other competent court.

20. CONTINUED EXISTENCE OF RIGHTS

20.1 The rights and obligations of the parties shall be binding on and inure to the benefit of the parties and their respective successors, permitted assigns, directors, officers, employees, agents and legal representatives. Termination of one or more of the rights or obligations of the parties, without prejudice to the cause, shall not affect those provisions of the GTC which shall remain in force after such termination.

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**21. INDUSTRIAL PROPERTY RIGHTS**

- 21.1 All industrial property rights arising from or in connection with the products are the exclusive property of Innutri.
- 21.2 Innutri has not examined the possible existence of third party industrial property rights that could be infringed as a result of the sale and/or delivery of the products; Innutri cannot be held liable for loss or damage in this respect.
- 21.3 The sale of the products does not transfer, by implication or otherwise, any license under any industrial property right with respect to the compositions and/or applications of the products; the customer expressly assumes all risks of infringement of industrial property rights resulting from the use of the products, either individually or in combination with other materials or in a processing operation.

22. FORMAL NOTICES

- 22.1 The headings contained in these GTC are for convenience only and shall not affect the interpretation or interpretation of the GTC. The document was created with automatic hyphenation.
- 22.2 The original version of these GTCs was prepared in German. In case of discrepancy or contradiction between the German version and a translation of the same, the German version shall prevail.

23. INTERNET - LEGAL INFORMATION

- 23.1 Contents: The Innutri website www.innutri.ch and www.innuwell.ch has been compiled with great care. It is constantly expanded and updated. Nevertheless, Innutri cannot accept any liability for the accuracy and completeness of the information provided.
- 23.2 Product information: The material offered on these web pages is intended to provide general information. It does not replace any business, technical or other professional advice. Innutri accepts no responsibility for damage, injury or loss arising from the use of this information.
- 23.3 Further reference is made to Innutri's privacy policy.

24. CONFIDENTIALITY AND KNOW-HOW

- 24.1 All business and technical information which the customer obtains about Innutri or the products manufactured or to be manufactured by Innutri are the property of Innutri, constitute business secrets of Innutri and must therefore be kept strictly confidential. Such information may not be disclosed or made available to third parties without the consent of Innutri, nor may it be used by the customer for his own or third party purposes. Documents containing confidential information of Innutri may not be copied, but must be returned to Innutri without request.
- 24.2 All recipes with or according to which Innutri manufactures products are its property and constitute its know-how to be kept secret, irrespective of whether it manufactures such products to order and using raw materials and ingredients supplied by the customer. The recipes are to be treated confidentially.