I. Scope of Application

1. Our general sales and delivery Terms shall apply exclusively to all contracts with signatories based outside of Germany. By placing the order the customer gives his consent to the application of our general sales and delivery terms. Our general sales and delivery terms shall also apply to all future business with this customer even if no express reference is made to them, provided that the customer was presented with our general sales and delivery terms with an earlier order which was confirmed by us. Should an order be placed under different conditions, our general sales and delivery terms shall still apply exclusively even if we do not object formally. Any deviations are therefore only valid if they are expressly acknowledged by us in writing.

2. These general sales and delivery terms apply only to entrepreneurs within the meaning of section 14 of German Civil Code, legal persons under public law or special funds under public law.

II. Offers, Statements regarding the condition of the products, Written form

1. Our offers are non-binding and subject to change. Offer-related documents shall not be rendered accessible to third parties.

2. Information, recommendations, offers and agreements provided or entered into by our employees as well as contractual supplementary agreements, provisos, changes and amendments are only binding for us if they have been confirmed in writing. This shall also apply to the cancellation of the written form requirement.

3. Regarding the nature of the goods only the product description of the manufacturer is considered as agreed upon. FRAGOL does not provide customers with guarantees in the legal sense. The manufacturer's guarantees shall remain unaffected.

4. Orders of new customers shall only be deemed accepted if they are confirmed in writing or carried out

5. We point out that, due to the long-term planning of FRAGOL's production, the cancelation of an order that has already been confirmed and that FRAGOL produces according to a customer's individual specifications is, in case of customized products within 14 days prior to the date of shipment as agreed upon, excluded. The aforementioned periods shall not constitute a customer's right to demand a cancelation of the contract. Such a cancelation is at the sole discretion of FRAGOL.

6. Framework contracts only become effective if they are confirmed in writing.

III. Handling of the delivered products

1. The customer is responsible for the suitability of the barrels and facilities which are to be filled (e.g. cleanliness, leak-tightness, filling quantity, etc.).

2. Insofar as our products are subject to the Ordinance on Hazardous Substances, the customer is obliged to observe and adhere to our product-specified safety data sheet when storing and processing the products and to hand over corresponding safety data to its own customers when reselling the products. Current versions of the safety data sheets are available on request. Insofar as the products delivered by us are classified as hazardous goods, they may only be stored and transported in permitted packaging and means of transport with the specified identification.

IV. Prices

“Carriage paid” prices are subject to the condition of unhindered traffic. The customer shall bear any additional costs which arise in this case and are caused by traffic hindrances FRAGOL is not responsible for. In case of “carriage paid” prices we are entitled to determine transport route and method.

V. Delivery/Liability in case of default

1. The amount and quality of the delivered products shall be bindingly examined and determined with a customary method of our choice.

2. Deliveries that are short or excessive of the agreed amount within a difference regarded usual in trade are considered as fulfillment of the contractual obligation.

3. Delivery dates are only indicative unless expressly confirmed as binding.

4. We shall be released from our delivery duty if we through no fault of our own do not receive supplies correctly or in due time despite having placed a congruent supply order with a supplier. We shall inform the customer of the non-delivery immediately and assign all rights we have against the supplier due to the incorrect, late or defaulted delivery to the customer.

5. Should one of our suppliers discontinue producing a certain product without prior notice, so that we are not able to provide the customer with this product, we shall be entitled to replace the ordered product with a product of at least equivalent quality from another supplier.

6. The customer shall cooperate when accepting delivery and shall inform us in due time of difficult delivery conditions (e.g. difficult access, long narrow paths).

7. If the customer is in default of acceptance, fails to act in cooperation or if the delivery is delayed for reasons for which the customer is responsible, the customer shall bear the risk of accidental loss and accidental deterioration. Furthermore we are entitled to claim any damages resulting from the delay, including additional expenses (e.g. storages costs). FRAGOL shall calculate a lump-sum compensation amounting to 0.25% of the invoice amount per calendar week as of the date of delivery or – if a date of delivery has not been agreed upon – upon the customer's notification of readiness for dispatch or pick-up. The lump-sum compensation shall however be limited to a maximum of 5% in the event of a final non-acceptance.

   This shall not affect our right to prove higher damages and our statutory rights (in particular but not limited to reimbursement of additional expenses, reasonable compensation and rescission rights). The customer may prove that FRAGOL has not incurred any damages or that the damages are substantially lower than the aforementioned lump-sum.

8. We are liable in accordance with the statutory provisions if a commercial fixed deal was agreed upon or if the customer is entitled to claim that he has no interest in continuing with the further performance of the contract as a result of a delay in delivery we are responsible for. We are also liable in accordance with the statutory provisions where the delay in delivery is due to a willful or grossly negligent breach of contract attributable to us or due to a culpable breach of an essential contractual obligation (obligation which makes the carrying out of the contract possible and which a customer would ordinarily be entitled to depend upon). Fault on the part of our representatives or employees shall be attributed to us. Provided that the delay in delivery is not attributable to a willful or grossly negligent breach of contract attributable to us, our liability for damages shall be limited to foreseeable, typically occurring damages.

9. Apart from that, in the case of delayed delivery, after prior notification of the customer at least in textform (email, telefax, etc.) we are liable for every completed week of delay in the scope of a lump-sum compensation for delay of 3% of the purchase price, which however shall not exceed 15% of the purchase price. This liability is void if it becomes apparent that the customer did not suffer any disadvantage due to the delay.

VI. Transfer of risk

1. Unless otherwise stated in the order confirmation, delivery "FCA" according to current incoterms shall be deemed as agreed upon. Risk transfer with FCA and CIP deliveries takes place with the completion of loading on to the main means transport in accordance to incoterms.

2. We are not obliged to expressly notify the customer of the availability of the goods for transport insofar as an acceptance date was agreed upon.

VII. Unloading

In case delivery was agreed upon differing from Section VI., the customer is obliged to unload immediately and appropriately. Should we assist, this happens without any legal obligation and at the customer's risk.

VIII. Force majeure

1. In cases of force majeure, in particular in the event of strike, lock-outs, unforeseeable interruption of operations, unavoidable raw material shortage and any other circumstances beyond our control, we are entitled to restrict or defer delivery for the duration of the hindrance. In case the event of force majeure lasts for more than two months or leads to permanent impossibility of performance, we are entitled to withdraw from the contract fully or in part. This shall also apply in case our suppliers as our vicarious agents are released partly or entirely from their delivery duty due to force majeure. We shall immediately inform the customer in the event of force majeure. In such cases we are entitled to deliver with delay including a reasonable start-up time. After a period of four weeks from the occurrence of the event, the customer may impose a reasonable deadline saying that it will no longer accept delivery after the expiry of this deadline. Should the deadline expire and no delivery be made, the customer is entitled to withdraw from the contract by notification at least in text form. In this case any advance payments will be refunded to the customer. Provided it is apparent that delivery will not be carried out within the determined deadline, the customer is entitled to withdraw from the contract immediately.

2. Should, in event of force majeure, the quantities available to us not be enough for the satisfaction of all customers, we are entitled to make even reductions from all delivery obligations. In this case the customer is only obliged to pay the proportional purchase price. Beyond that we are released from our delivery duty.

IX. Notification of defects

1. The customer shall immediately examine goods and packaging after delivery, in any case prior to reselling, processing, mixture or using the goods and shall immediately notify us of any defects or wrong, short or excessive delivery at least in text form. To facilitate our analysis of defective goods the customer shall take a sample of 1 liter if this is viable with respect to the amount delivered. Notice of defects must reach us at least in text form within ten days of delivery otherwise the goods are considered as approved by the customer, unless it is a latent defect that was not identifiable during the examination of the goods. If such a defect appears later, the notification must be made immediately after the identification otherwise the goods are considered as approved with regard to this defect also. Notifications of defects are not permissible, if the examination of the goods is no longer possible, unless the product was processed within its intended purpose.

2. Rejected goods may only be sent back with our express consent. In case of legitimate notice of defects we shall reimburse the costs of the cheapest dispatch of goods.

3. The customer shall document damages in transit against the transporter and notify us of such damages immediately at least in text form except when the customer picks up the goods.

4. Our damage reduction measures shall not be deemed as an acknowledgment of the defect. In case of negotiations regarding complaints, we do not waive the objection that the complaint was not made in time or that it was unfounded or insufficient in any other way.

X. Liability of defects

1. In case of justified notice of defect we shall be entitled at our option to either remedy the defect by carrying out repair or by supplying the customer with a new product which is free of defects. In addition, we are obliged to comply the customer´s claims arising from section 439 para. 2 and 3 as well as section 475 para. 4 and 6 of German Civil Code, if the respective legal requirements are fulfilled. In case of removal of defects we bear any necessary costs as far as they do not exceed the purchase price. Should the repair or replacement fail to remedy the defect, the customer is entitled at his option to either request reduction of the purchase price or cancellation of the contract.

2. Customer´s recourse claims against us according to sections 445a and 478 (entrepreneur´s recourse) of German Civil Code exist only to the extent that the customer has not made any agreements with his purchaser beyond the legal claims for defects. If only entrepreneurs are involved in the supply chain including the last purchase contract, the application of section 445a para. 1 and 2 of German Civil Code is excluded.

3. The period of limitation for claims for defects is one year, commencing with the transfer of risk.

4. Insofar as the customer suffers damages or useless expenses due to defective products, we are liable in accordance with Sections X.2 and XI.; all further liability is excluded.

XI. Other Liability

1. We are liable in accordance with the statutory provisions to the extent that the customer asserts damage claims which are caused by intent or gross negligence including intent and gross negligence of our representatives or employees. Should no willful breach of contract be claimed, our liability for damages is limited to foreseeable and usually occurring damages.

2. We are liable in accordance with the statutory provisions to the extent that we culpably violate an essential contractual obligation (obligation which makes the carrying out of the contract possible and which a customer would ordinarily be entitled to depend upon). However, in this case our liability is limited to foreseeable and usually occurring damages.

3. Our liability for culpable injuries to life, body or health remains unaffected. This also applies to the mandatory liability in accordance with the product liability laws.

4. The aforementioned limitation of liability according to the preceding paragraphs shall also apply if and when a customer instead of a claim for damages, requests compensation for useless expenses.

5. Insofar as our liability is excluded or limited, this applies equally in relation to our employees' and representatives' personal liability to pay compensation for damages.

XII. Terms of payment, setoff

1. Our invoices are due at our registered office without deduction within 30 days after invoice date.

2. The statutory value added tax is not included in our prices. It will be indicated as a separate item of the invoice in the amount applicable at the time of billing.

3. The customer shall only be entitled to setting off against payments due to us or exercising his right of retention if and when the counterclaim of the customer is undisputed or established as legally valid or in case the counterclaim is mutual in terms of section 320 of German Civil Code. The customer is entitled to exercise his right of retention insofar as his opposing right is based on the same contractual relationship.

4. Our employees are not entitled to receive payments and are not authorized to any kind of disposal, unless they are provided with a written power of attorney

5. We are entitled to assign our claims from our business relationships.

XIII. Delay in payment, doubts regarding the buyers creditworthiness

1. Should the customer be in default with any of its payment obligations, all granted discounts, deductions and other privileges shall become invalid and all existing outstanding depths shall become due.

2. Should we be obliged to advanced performance, we are entitled to refuse performance if it becomes apparent after conclusion of the contract that our entitlement to payment is endangered by the customer's inability to fulfill its payment obligations or by justified doubts in its creditworthiness. In this case we may impose a reasonable deadline by which the customer at its option may perform its payment obligation against delivery of the goods or provide other security for the delivered goods. After the unsuccessful expiry of the deadline we shall be entitled to withdraw from the contract.

XIV. Retention of title

1. We reserve title to ownership of the goods sold pending receipt of all payments due to us from the delivery contract and any other business relationship with the customer - this pertaining to all claims that already existed when the particular contract was entered into.

2. The customer is obliged to treat the sold goods with care; he is especially obliged to insure them sufficiently at his own expense against damage by fire, water and theft in the amount of the replacement value. The customer hereby assigns the insurance claim for the case of damage to us, as a first-priority partial sum in the amount of the purchase price of the retained goods delivered by us.

3. In the event of attachments or other interventions by third parties, the customer is obliged to inform us immediately at least in text form, so that we can file an action in accordance with Section 771 of the German Code of Civil Procedure. Insofar as the third party is not able to reimburse us for court costs and extra-judicial costs of an action pursuant to Section 771 of the German Code of Civil Procedure, the customer shall be liable for the loss.

4. The customer is entitled to sell the goods in the ordinary course of business; however, he hereby assigns all claims up to the amount of the final invoice total (including VAT) which arise from the resale to us, regardless of whether the purchased goods have been resold with or without further processing. The customer remains entitled to assert the claim even after having assigned it to us. Our right to collect the claim ourselves shall remain unaffected by this. However, we shall refrain from collecting the claim as long as our contractual partner meets the payment obligations from the collected revenues, is not in delay of payment or, in particular, has not filed an application for insolvency proceedings, or suspension of payments is given. If however, this is the case, we can demand that the customer informs us of the assigned receivables and the persons owing these, provides all information needed to collect these receivables, gives us the related documents and informs the debtors (third parties) of the assignment of debts.

5. Processing or transformation of the purchased goods by the customer is in each case performed for us. If the provided goods are processed with other objects which do not belong to us, we obtain co-ownership of the new item in relation to the value of our item (final invoice amount plus VAT) to the other processed items at the time of processing. Apart from that, the same terms apply to the item produced by processing as to our retained goods.

6. If the provided goods are inseparably combined with other objects which do not belong to us, we obtain co-ownership of the new item in relation to the value of our item (final invoice amount plus VAT) to the other processed items at the time of mixing. If mixing takes place in such a way that the customer's item is to be considered the main item, it is considered as agreed upon that the customer transfers joint ownership to us in proportion. The sole ownership or co-ownership as it has thus originated shall be held in custody for us by the customer.

7. We shall release the security owed to us at the customer's request to the extent that the value of our security exceeds the claims to be secured by more than 10%; the selection of the type of security to be released lies with us.

XV. Prohibition of assignment

The customer needs our prior consent in order to assign, pledge or in any other way dispose of any claims the customer is entitled to against us.

XV. Packages, tankers and other equipment, barrels, tube connections (containers)

1. We are not obliged to inspect containers provided by our customers regarding their suitability - in particular with regard to cleanliness. We are not liable for any damages or defects caused by defective or in any other way inadequate containers. All containers provided by us or third parties must not be interchanged or used as storage containers or handed over to third parties.

2. Containers and any other reusable transport packaging shall be returned to the place determined by us immediately. In case of late return we may charge rent in the customary amount. Regardless of fault, the customer is liable for improper use, damage or loss of containers which we provided the customer or any third party determined by the customer with.

XVII. Storage of data

We store the customer's personal data within the scope of our business relationship. We do not pass this data on to third parties.

XVIII. Jurisdiction, place of performance, choice of law

1. Provided that the customer has the status of a merchant, place of jurisdiction shall be our principal place of business (Regional Court in Mülheim an der Ruhr) however, we shall be entitled to file action against the customer at the customer's place of jurisdiction.

2. Unless otherwise agreed in the order confirmation, our principal place of business shall be the place of performance. Our principal place of business shall also be deemed the place of delivery within the meaning of Art. 5 No. 1 lit b) of the Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

3. The contract is governed by the laws of the Federal Republic of Germany; but under exclusion of the UN Convention on Contracts for the international Sale of Goods (CISG).

4. Should Incoterms be agreed upon, they shall apply in their currently valid version.

5. Should individual provisions of the contract with the customer, including these general terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions.