

# General Terms and Conditions & Terms of Delivery - AGRANA Fruit Austria GmbH

## 1. Scope of application

These general conditions are applicable as far as the parties to the contract did not agree otherwise in writing. Conditions of purchase or individual provisions of conditions of purchase of the purchaser do not oblige the seller in any case, even if the seller does not object explicitly. Conditions of purchase of the purchaser are only applicable for the seller if the seller has accepted them explicitly in writing. These general conditions are applicable beyond the current business scenario for all future sales as well, even if future telephone or oral transactions are not concluded explicitly under the condition of the validity of these general conditions.

## 2. Offer

Offers of the seller are not binding.

## 3. Conclusion of a contract

The contract comes into existence with the receipt of the order confirmation by the seller which is signed by the purchaser on behalf of the company.

## 4. Delivery

4.1. The written order confirmation is exclusively binding for type and scope of delivery, price, packaging as well as mode of delivery and payment; special arrangements shall be confirmed in writing.

4.2. The purchaser is not entitled to rescind from the contract due to delay in delivery or to claim damages for a delayed delivery, unless the delivery is not carried out within the period for subsequent delivery, despite the fixing of a reasonable period for subsequent delivery of 4 weeks. The period for subsequent delivery may only be fixed in writing by means of registered letter after the delivery time has expired. It starts from the day of receipt of the respective declaration by the seller.

4.3. The agreed delivery time is valid provided that there are no circumstances which are unforeseeable or independent from the intent of the parties, e.g., events of force majeure, transportation damages due to acts of war, energy shortfalls, labour conflicts or crop failures. Due to such circumstances, even if they occur at the sub-supplier's, the seller is entitled to extend the delivery time in a reasonable way or to rescind from the contract. In those cases the assertion of damages for non-performance or delayed performance is excluded. Each delivery is restricted by the reservation that the seller as well receives the corresponding deliveries from potential sub-suppliers.

4.4. Delivery times are always applicable on an approximate basis, as far as there are no special agreements in the individual case, which have been concluded explicitly in writing. Partial deliveries are admissible. They are deemed independent deliveries and shall be paid accordingly.

4.5. All deliveries shall be shipped at the risk of the purchaser, notwithstanding who pays for the carriage. Insurance will only be taken out after written commissioning by the purchaser and at their own expense. The risk of sinking or deterioration of the goods shall be passed on to the purchaser as soon as the goods have left our works (Gleisdorf or Kröllendorf). The purchaser shall bear the risk of transportation also if the seller carries out the transport or delivers with their proper vehicles. In particular, the seller may not be held liable for default of their own or of other transportation entities, but only for the proper selection of them.

## 5. Agreement of acceptance

5.1. The purchaser is obliged to take over the goods immediately after arrival at the agreed place of delivery and to check their quality. Goods which are forwarded by ship or which are travelling by other means of transportation shall be accepted by the purchaser on request of the seller also outside of normal business hours and on Sundays and holidays as well. If the purchaser does not fulfil this obligation, the damages which result from this - regardless from which title - shall be borne by the purchaser. The original net weights and the original number of pieces determined at the place of loading are decisive for the calculation. The purchaser shall check the goods delivered by the seller within 24 hours at the latest and communicate defects or damages or the deviation of the delivery from the order confirmation immediately to the seller, and shall confirm this by means of a registered letter within 3 days at the latest. Beyond this, the purchaser shall state potential damages of the goods and deviations of the delivery from the order confirmation in the specialist documentation. In the event of defect complaints, the purchaser shall keep the goods freely accessible for examination by the seller or by third persons commissioned by the seller for inspection. After the expiration of the respective period, the entire goods shall be deemed approved. If a notice of defect results unjustified, the purchaser shall compensate for all the expenses incurred to the seller in this context. Basically, quality complaints shall be pronounced in any case before the unloading of the goods. After the unloading, the purchaser's right to make a complaint expires and the goods are deemed to be taken over.

If there are quality deficiencies regarding a part of the delivery not exceeding a percentage of 5% and the rest of the lot corresponds to the quality designation according to the order confirmation, the purchaser shall be solely entitled to an appropriate price reduction. If the goods have been acquired after the inspection by the purchaser or their authorised persons, any complaint shall be excluded. Complaints referring to numbers of pieces and weight shall be communicated within 48 hours after provision of the goods by the carrier and noted in the freight documentation. In both cases, a statement of payout of the building authorities or weight notes of the building authorities shall be presented within 7 days. In the event of differences, the purchaser shall prove that the delivery of the seller did not meet the requirements of the contract. Any guarantee shall be excluded as soon as the goods have been modified by third parties. For goods sold in "as is" condition, the purchaser is not entitled to complain. Each delivery or partial delivery is deemed independent transaction. Possible defects on delivery shall not have legal consequences for further deliveries.

5.2. If the purchaser is in delay of acceptance, the seller may claim performance or rescind from the contract after fixing a period of grace of maximum eight days. In both cases, the seller is entitled to claim the damage culpably caused by the purchaser.

5.3. If a delivery on call is agreed, the goods are deemed to be called one year after the order at the latest.

## 6. Payment

6.1. In default of a special agreement, the payment shall be made within 30 days after receipt of the invoice, cash without any deduction in the agreed currency.

6.2. The date of payment shall be the day of receipt at the cashier of the seller.

6.3. If the purchaser falls in arrears regarding a payment or other performances, the seller may

- postpone the performance of their own obligations until the execution of the delayed payments or other performances;
- claim an appropriate extension of the delivery time;
- claim the payment of the entire remaining rest of the purchase price (loss of date) and
- calculate default interest to the amount of 6% above the respective bank rate of the Central Bank of Austria (*Österreichische Nationalbank*) plus sales tax or
- declare the rescission from the contract and claim damages after fixing a period of grace of 14 days.

6.4. Payments shall always be used for the settlement of the eldest due debits and of the respective incurred default interest and dunning charges. An opposite assignment by the purchaser is ineffective.

6.5. Prior to the complete payment of payable invoice amounts including default interest and dunning charges, the seller is not obliged to perform further deliveries resulting from any current contractual relationship.

6.6. If the purchaser is in arrears regarding a payment falling due or if a material deterioration of the financial circumstances of the purchaser occurs, the seller may claim cash payments prior to the delivery of the goods for all the remaining deliveries under omission of the payment period. If the required advance payment is not made, the seller is entitled to rescind from all the transactions concluded with the purchaser without fixing a period of grace.

6.7. The purchaser is not entitled to withhold or set off payments on the basis of warranty claims or other counterclaims. The seller will accept cheques and bills of exchange only as undertaking to pay and will invoice the usual discounting charges to the purchaser. The cession of claims of the seller may not be excluded and may not be declared as depending on the consent of the purchaser.

## 7. Reservation of title

7.1. Until the complete payment of the invoice amount plus possible default interest and dunning charges, the seller retains the title of the delivered goods. The reservation of title shall be valid until the complete satisfaction of the claims of the seller from all the mutual legal relations. The purchaser shall adhere to the necessary formal requirements in order to ensure the reservation of title. In the event of a distraint or other utilisations, the purchaser shall refer to the title of the seller and notify the seller immediately.

7.2. The seller shall be entitled to enter the business and storage premises of the purchaser and to draw up an inventory concerning the remaining goods for the purpose of asserting the reservation of title. The purchaser shall ensure a proper storage of the goods subject to reservation of title at their own expense.

7.3. The purchaser is obliged to send back the goods affected by the reservation of title to the seller to Gleisdorf or Kröllendorf, or to hand them over to the seller or an authorised person at the place of custody, according to the choice of the seller. The seller on his part is entitled to take possession of the goods affected by the reservation of title at any time. All costs for retrieving the goods affected by the reservation of title shall be borne by the purchaser.

7.4. A pledging or chattel mortgage is prohibited to the purchaser. Resale or processing shall be admissible subject to revocation in the scope of a proper business operation, if the cession of the claim deriving from the sale or the processing to the seller is possible. In the event of a resale of the goods delivered by the seller, the purchaser hereby shall cede the claim deriving from the resale to the seller in advance to the amount of the value of the seller's delivery. The same shall apply for the cases where a resale according to the aforementioned limitations was not admissible. The seller accepts the cession in this respect by now. Insofar as the purchase price is paid by a third party to the purchaser, the purchaser shall take possession of it separately for the account of the seller on a fiduciary basis only and shall pass it on immediately to the seller up to the amount of their claim.

## 8. Guarantee and damages

8.1. The purchaser is obliged to check the goods carefully promptly after receipt and to communicate identified defects to the seller immediately.

8.2. The purchaser shall give the opportunity to the seller to review the existence of the indicated defects.

8.3. After having started processing the delivered goods, no defects may be asserted anymore.

8.4. If a complaint for existing defects is communicated in due time, the seller is entitled to improve their performance within four weeks after receipt of the notice of a defect or to perform the lacking points subsequently.

8.5. Complaints concerning quality deviations which are customary in trade or may not be avoided technically are not admissible.

8.6. In the event of delay in delivery, defective performance or non-performance, the purchaser shall be entitled to claim damages only if the seller is to blame for grave fault. The assertion of lost profit shall be excluded in any case.

8.7. The seller only assumes the liability for the warranty of assured quality if this has been explicitly agreed in writing. The liability of the seller for products of sub-suppliers shall be restricted to the cession of claims the seller is entitled to towards the sub-supplier. All further or other claims of the purchaser, differing from the claims provided for in these general conditions, shall be excluded regardless for which cause in law, as far as there are no different results deriving from these general conditions. The amount of the liability shall be in any case restricted to the damages predictable at the date of the conclusion of the contract, and as far as an insurance has been taken out for these damages, the liability shall be limited to the amount of the respective sum insured.

## 9. Place of performance and place of jurisdiction

9.1. The place of performance for the delivery is the place of consignment. In the event of a shipment, this is carried out to the account of the purchaser, unless the delivery free to destination, carriage paid has been agreed explicitly in writing. The place of performance for the delivery shall be the place of consignment for deliveries free to destination, carriage paid, as well. In the event of carriage-forward deliveries, the seller solely shall pay or bear the carriage free station.

9.2. The place of performance for the payment and the place of jurisdiction - for the summary procedure based on documentary evidence, the summary bill enforcement proceedings and the summary proceedings as well - shall be Gleisdorf in any case. For all disputes arising out of this contract, also referring to its validity, the factually competent court for Gleisdorf shall be exclusively competent.

9.3. Substantive Austrian law shall apply exclusively. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded mutually.

## 10. General conditions of sale

10.1. If parts of these general conditions should be invalid in whole or in part, the effectiveness of the rest of the parts shall not be affected thereby. An invalid provision shall be deemed to be replaced by a valid provision which equals the economic purpose of the invalid provision as far as possible. Covenants or amendments of the contract require the written form.

10.2. These conditions are binding in German language only.

#### 11. Code of Conduct

In the course of this agreement, both Parties agree to adhere to the AGRANA Code of Conduct which is attached and available at: [https://www.agrana.com/fileadmin/inhalte/Code%20of%20Conduct/Update2019/Code\\_of\\_Conduct\\_AGRANA.pdf](https://www.agrana.com/fileadmin/inhalte/Code%20of%20Conduct/Update2019/Code_of_Conduct_AGRANA.pdf). AGRANA reserves the right to monitor the adherence to the Code of Conduct. If the business partner becomes aware of a violation of the principles of the agreed Code of Conduct, it must notify AGRANA immediately and agrees to take appropriate measures to stop the violation and minimize the damage. As a final measure, AGRANA reserves the right to terminate this contract immediately.

Gleisdorf, on 15 June 2022