

General Terms and Conditions of Sale and Delivery of Fruit Security GmbH, 257064k

§ 1 General provisions

- (1) The following terms and conditions shall apply, as amended in each case, to all present and future sales contracts with us as seller, even if we do not explicitly refer to them in specific instances.
- (2) We hereby object to any counter-confirmations, counter-offers or notes of the purchaser that refer to the latter's General Terms and Conditions; any deviating terms of the purchaser shall only apply if confirmed by us in writing. If the purchaser is a consumer within the meaning of the KSchG (consumer protection act), our terms shall only apply to the extent they do not violate any mandatory legal rules.
- (3) The purchaser may assign any claims resulting from legal transactions concluded with us only upon our explicit consent.

§ 2 Contractual principles

- (1) Our offers shall always be without obligation – in particular with respect to quantity, price and delivery time.
- (2) (Purchase) Orders placed by the purchaser shall only be deemed accepted by us (even if placed by accepting any offer submitted by us) if we have confirmed them in writing.
- (3) All of the documents that the conclusion of the contract was based on shall be considered to form the basis of the contract, and in the following order of priority:
 - a) the order confirmation transmitted to the purchaser
 - b) the purchaser's (purchase) order
 - c) our underlying quotation
 - d) the fact sheets and specification sheets transmitted by us
 - e) the sampling documents and/or plans transmitted by us
 - f) other documents that the contract is based on
- (4) The documents pertaining to the offer, such as illustrations, drawings, weight specifications and dimensions only represent approximations, unless they are explicitly designated as binding. We reserve the title and copyright to cost estimates, drawings, plans and other documents; they must not be made accessible to third parties. Information contained in brochures and leaflets is non-binding.
- (5) The static requirements of the system are specified in the specification sheet. Structural analyses and ground anchor tests shall only be performed upon the purchaser's explicit request and lie in the responsibility of the purchaser. However we point out that our system must be based only on tested anchors.

§ 3 Terms of payment

- (1) Our prices are indicated net of VAT as applicable at the time of performance of the delivery.
- (2) If additional or increased costs (e.g. customs duties, currency adjustment) are incurred due to legislative changes occurring between the time of contract conclusion and delivery, we shall be entitled to increase the agreed prices accordingly.
- (3) The purchase prices charged by us shall basically be due for payment without deduction immediately after receipt of the invoice, unless any other payment term is agreed in writing.
- (4) We shall not accept bills of exchange or cheques, except if so agreed in exceptional circumstances and only as payment. Discount and note charges shall be for the account of the purchaser and shall be due immediately.
- (5) If the invoice amount is not settled within 14 calendar days after the invoice date or on any other due date, we shall be entitled to charge default interest for damages in the amount accounted for, but at least – and regardless of fault – in the amount of 9.2 percentage points above the respective OeNB base rate p.a. (amount of the statutory default interest rate for transactions between entrepreneurs), without any separate dunning letter being required.
- (6) If the purchaser no longer carries on any regular business operations, if, in particular, any cheque or note protest takes place or if any delay or even suspension of payment occurs, or if judicial or out-of-court composition proceedings are initiated or any proceedings under insolvency law are opened with respect to its assets, or if such proceedings are not opened, but only for lack of sufficient assets to cover the costs, we shall be entitled to demand immediate payment of our claims from the business relationship, even if we have accepted notes or cheques. The same shall apply, if the purchaser is in default of its payments to us, or if other circumstances are revealed that raise certain doubts as to its creditworthiness. Moreover, in that event we are entitled to withhold outstanding ser-

vices, to request payment in advance or to be provided with collateral or to rescind the contract.

- (7) The purchaser shall only be entitled to offset any claims against our claims and to withhold or reduce any payments, if the counter-claims alleged by it in this respect have been established as final and absolute in court or explicitly acknowledged by us.

§ 4 Delivery / transfer of risk

- (1) The goods shall always travel uninsured, and in any event at the risk of the purchaser. This shall also apply in case of delivery "carriage paid" and regardless of which means of transport is used. The risk of accidental destruction of the goods shall vest in the purchaser upon handover to the carrier. Transport insurance shall only be contracted upon the purchaser's explicit request. Any costs incurred in this context shall be borne by the purchaser exclusively.
- (2) Unless agreed otherwise in writing, the choice of the place of dispatch and of the transport route as well as the means of transport shall be effected by us according to our best judgement, without assuming any liability for the cheapest, best and quickest transport option.
- (3) If the purchaser provides the means of transport, it shall be responsible for providing the same on time. Any delays shall be notified to us in good time. Any resulting costs shall be borne by the purchaser.
- (4) We shall be entitled to effect reasonable partial deliveries.
- (5) Our delivery obligation shall always be subject to timely and proper delivery to us by our subcontractors.
- (6) All delivery and unloading times indicated are non-binding, unless explicitly agreed otherwise in writing.
- (7) Obstacles to delivery that are due to force majeure or due to unforeseeable events that we cannot be blamed for, such as unfavourable weather conditions, breakdowns at our premises or at those of our subcontractors, strikes, lock-outs, official orders, subsequent lapse of export or import possibilities, as well as in connection with our reservation regarding delivery to us by subcontractors acc. to para. (5) above, or due to reasons attributable to the sphere of influence of the purchaser shall release us from the obligation to observe any delivery or unloading times agreed, for the duration and to the extent of the effects of such events. Such events shall also entitle us to rescind the contract, without any claims for damages or other claims arising on the part of the purchaser.
- (8) If an agreed time of delivery or unloading is exceeded, without the existence of any delivery obstacle according to para. (7) above, and if the obstacle is attributable to our sphere of influence, the purchaser shall grant to us, in writing, a reasonable grace period of at least three weeks. If we culpably fail to observe said grace period as well, the purchaser shall be entitled to rescind the contract, but not to assert any claims for damages from non-performance or default, unless we have acted with intent or gross negligence.
- (9) The purchaser is obliged to return to us empty containers (boxes, pallets etc.) of the same type, quantity and value as it has received them for the purpose of delivery.

§ 5 Warranty / damages

- (1) The quality of the goods depends on commercial usage, unless otherwise agreed in writing in individual instances.
- (2) Minor deviations shall not be considered as defects.
- (3) The provisions on special recourse under § 933b ABGB (Austrian civil code) and on the decisiveness of public statements with respect to the scope of supply and services (§ 922 para. 2 ABGB) shall not apply. In any event, the existence of defects at the time of delivery must be demonstrated by the purchaser.
- (4) The purchaser is obliged to examine the goods immediately upon delivery, or in case of collection upon takeover, in terms of quantity, weight and packaging and to record any complaints in this respect on the delivery slip or the B/L or the notice of receipt; and also to inspect the same for any defects and to report such defects immediately.
- (5) In case of any complaint about defects, the purchaser shall comply with the following formal requirements and deadlines:
 - a) The letter of complaint must be effected until expiry of the working day following delivery of the goods at the agreed place of destination or taking delivery of the same. If the letter of complaint refers to a hidden defect that initially remained undiscovered in spite of proper initial examination acc. to para (4) above through no fault of

the purchaser, deviating deadlines shall apply, according to which the letter of complaint must be effected until expiry of the working day following discovery of the defect, but within eight days after delivery of the goods or taking delivery of the same at the latest.

b) The detailed letter of complaint in writing must be received within the aforementioned deadlines (by post or by e-mail). Complaints by telephone shall not be sufficient. Complaints vis-à-vis commercial representatives or agents shall be irrelevant.

c) The letter of complaint must clearly indicate the type and extent of the alleged defect.

d) The purchaser shall be obliged to keep the rejected goods ready for inspection by us, our suppliers or any experts commissioned by us, at the place of examination.

- (6) Complaints relating to the quantity, weight and packaging of the goods shall be excluded, if the comment required acc. to para. (4) above is missing on the delivery slip or B/L or the receipt. Moreover, any kind of complaint shall be excluded as soon as the purchaser mixes, uses, resells the delivered goods or has started to finish or process the same.
- (7) Any goods that are not rejected in due form and in due time shall be deemed approved and accepted; in that case any warranty claims or claims for damages shall be excluded.
- (8) In case of complaints lodged in due form and in due time, that are objectively justified, the customer shall only have the right to claim subsequent improvement or (if improvement is impossible) replacement, however subject to our right to replace the faulted goods instead of improving them, or to reduce the price instead of replacement or improvement, or to decide on redhibitory action.
- (9) The purchaser shall not be entitled to any rights and claims beyond that. In particular, we shall not be liable towards the purchaser for damages due to non-performance or defective performance, unless there is intent or gross negligence on our part. Moreover, we shall not be subject to any liability for lost profit, consequential damage or for damage due to third-party claims.
- (10) In case of unjustified letters of complaint or claims for damages that cause extensive investigations, the purchaser may be charged for the cost of the investigation.

§ 6 Retention of title

- (1) The goods delivered by us shall remain our property until the purchaser has settled the claim in full.
- (2) Any pledging of the goods subject to retention of title (reserved goods) shall be inadmissible.
- (3) However, the purchaser shall be entitled to sell the goods delivered by us in the ordinary course of business. Moreover, we shall be entitled to revoke the purchaser's selling powers by written notice, if the purchaser is in default of performing its obligations towards us, in particular its payments, or if other circumstances emerge that make its creditworthiness appear doubtful.
- (4) The limitations of para. (3) above shall apply accordingly to the purchaser's right to process the goods delivered by us. Through processing, the purchaser shall not acquire any title to the fully or partially produced objects; processing shall be effected without consideration and exclusively for us as the manufacturer. If, nevertheless, our retention of title expires through any circumstances whatsoever, we and the purchaser agree that the title to the objects shall vest in us upon processing, that we accept the assignment, and that the purchaser remains the keeper of the objects without consideration.
- (5) If our goods subject to retention of title are processed or inseparably mixed with goods owned by third parties, we shall acquire co-ownership of the new objects or the mixed inventory. The scope of co-ownership is derived from the proportion of the invoice value of the reserved goods delivered by us to the invoice value of the remaining goods.

- (6) Any goods that we acquire title to or co-ownership of acc. to para. (4) and (5) above shall be considered as reserved goods in the sense of the following provisions, in the same way as the goods delivered to us subject to retention of title under para. (1) above.
- (7) The purchaser hereby assigns the claims from any resale of the reserved goods to us. The claims from resale shall also include the claim against the bank that has opened or confirmed a letter of credit in favour of the purchaser (= reseller) in the course of the reselling transaction. We hereby accept said assignment. If the reserved goods are processed products or mixed inventory exclusively containing articles that either belonged to the purchaser or were supplied to the latter by third parties under the so-called ordinary retention of title (*einfacher Eigentumsvorbehalt*), the purchaser shall assign the entire claim from resale of the goods to us. Otherwise, i.e. in case of advance assignments to both us and other suppliers, we shall be entitled to a fraction of the proceeds, namely a fraction corresponding to the proportion of the invoice value of our goods to the invoice value of the other processed or mixed goods.
- (8) The purchaser is authorised to collect the outstanding amounts from resale of the goods by direct debit. However, we may revoke the purchaser's direct debit authorisation if the purchaser is in default of performing its obligations towards us, in particular its payments, or if other circumstances emerge that make its creditworthiness appear doubtful. If the direct debit authorisation is revoked by us, the purchaser must immediately notify the debtors of the assigned claims upon our request and must provide us with the information and documents required for the direct debit procedure.
- (10) In case of third-party access to our reserved goods or to the receivables assigned to us, the purchaser shall be obliged to refer to our title/our right and to notify us immediately. The costs of the intervention shall be borne by the purchaser.
- (11) In case of violations of the contract, especially default of payment, the purchaser shall be obliged to surrender the reserved goods still in its possession, and to assign to us any claims for surrender relating to the reserved goods that may exist vis-à-vis third parties. The taking back and the seizure of reserved goods by us is not equivalent to rescission of the contract.
- (12) In the instances mentioned in § 3 (6), we may require the purchaser to notify us of the receivables resulting from resale and assigned to us under § 6 (7), as well as the relevant debtors. We shall then be entitled to disclose the assignment at our discretion.

§ 7 Miscellaneous

- (1) The place of performance shall be our registered office.
- (2) The place of jurisdiction for all disputes arising from the contractual relationship shall be Weiz. However, we may also choose another place of jurisdiction.
- (3) The law of the Republic of Austria shall apply. International sale of goods law shall be excluded. This shall explicitly apply to the application of the UN Convention on Contracts for the International Sale of Goods (CISG).
- (4) The invalidity of individual provisions of these General Terms and Conditions of Sale shall not affect the validity of the remaining provisions. Invalid provisions shall be deemed replaced by such valid provisions as are suitable to realise the economic purpose of the lapsed provision, to the extent possible.
- (5) The purchaser explicitly consents to its personal data being stored and processed by automatic means with a view to performing this contract.
- (6) In case of discrepancy between the German version and any translated version of the Terms and Conditions, the German version shall take precedence and shall prevail in all matters pertaining to any relationship between the parties.