



## General Terms of Purchase

### I. Object of contract/scope

- (1) These General Terms of Delivery and Payment shall only apply towards business partners in terms of § 14 BGB.
- (2) The Terms of Purchase shall apply to all orders of Agrarfrost GmbH & Co. KG (hereinafter referred to as "AGF") insofar as not otherwise agreed in writing. Contradictory or deviating conditions of the business partner will not be recognised. If AGF does not respond to the deviating terms and conditions of the business partner, this shall not automatically represent any recognition thereof.

### II. Delivery order

- (1) Orders made by AGF are also binding for the business partner without any special explanation towards AGF, insofar as the business partner does not cancel the order within a period of 48 hours or on the next business day.
- (2) Prior acceptance, the business partner has to inform us of any obvious mistakes or omissions in the order, including the order documents for the purpose of correction or completion; before acceptance; otherwise the contract will be deemed as invalid.

### III. Service contents

- (1) A breach of the statutory provisions and obligations, which are valid for the production and delivery of the goods or services of the business partner, shall establish the breach of an essential contractual obligation.
- (2) Should costs be incurred to AGF that result from a breach in accordance with Section III (1), then these costs will be passed onto the business partner unless it is not responsible for the breach. Further statutory claims for damages are unaffected hereby.
- (3) The business partner guarantees that the prices and conditions offered for the delivered goods and services were concluded without breaching the ban on anticompetitive conduct. Should an infringement of this ban or a participation in agreements in breach of competition be determined by a court or a cartel authority, the business partner is obligated to pay AGF a lump-sum damage compensation in amount of 5% of the purchase price incl. statutory interest for the affected reference and delivery period, unless the business partner is able to prove a lower amount of damage (or the nonoccurrence of damages). Further statutory or contractual claims of AGF shall remain unaffected hereby. AGF in particular reserves the right to prove higher damages. The lump-sum damages compensation is offset against this amount.
- (4) The business partner will make all information available to AGF that is necessary for the examination of the existence of claims of AGF.

### IV. Delivery times

- (1) The contractually agreed delivery time is binding.
- (2) The business partner undertakes to inform AGF immediately in writing if circumstances occur or become recognisable to him, from which it can be derived that the agreed delivery time cannot be adhered to.
- (3) In the event of the delay in delivery, AGF shall be entitled to the statutory claims. AGF is in particular entitled, after the expiry of an additional deadline for the service or supplementary performance, to cancel the contract and to request damages instead of the service.
- (4) AGF is not obliged to accept and to pay for partial or advance deliveries. These can be refused at the cost and risk of the business partner or alternatively placed in storage.



- (5) The business partner undertakes to state the AGF order number on all shipping documents and delivery notes. If the business partner refrains from doing this, then delays in the processing of the delivery are not the responsibility of AGF.

## **V. Packaging**

The business partner undertakes to fulfil the requirements arising from regulations under packaging law, in particular according to the packaging regulations. The "joint declaration for the disposal and recycling of transport packaging of December 1991" shall apply to the disposal of transport packaging. The settlement can be carried out by AGF either weight-related according to the Interseroh rates or according to the lump-sum compensation amounts (0.3 % of the net revenue relating to the packaged goods "Food" or 0.1 % of the net revenue relating to the packaged goods "Nonfood") and is, if not otherwise agreed, to be paid to AGF based on the corresponding schedule compiled in January of the following year.

## **VI. Delivery/passing of risk**

- (1) The delivery has, insofar as not otherwise agreed in writing, to be carried out according to Incoterm 2010 DDP.
- (2) The business partner has to transfer the goods over to AGF – insofar as not otherwise agreed in writing – by complying with the product-specific requirements at the point of destination. An unloading of goods without transfer to AGF is not permitted. The risk of the accidental loss or the accidental deterioration of the goods shall transfer to AGF upon the transfer of the goods to AGF.
- (3) Duplicate delivery notes are to be enclosed with all deliveries of goods; one copy serves to be delivered, of which one copy is determined as a receipt for the business partner.
- (4) Delivery notes may not contain any price details, but merely quantity details.
- (5) Delivery of goods that have been produced, processed or packaged by subcontractors and not by the manufacturer themselves is only permitted with the prior written consent of AGF.

## **VII. Prices/conditions**

- (1) The contractually agreed price is binding. However, the business partner is obligated – either before or after order confirmation, however prior to delivery to AGF – to reduce the price if the business partner has lowered their list prices. Price increases require the explicit consent of AGF.
- (2) Agreed prices are deemed respectively inclusive of secondary costs such as freight, packaging, transport insurance, customs clearance and secondary customs costs as well as possible cartages plus the applicable rate of value added tax.
- (3) Insofar as the business partner makes product samples available to AGF, which AGF requested for test purposes or for development work on new products, these are free of charge for AGF to a reasonable extent.

## **VIII. Payments/cash discount**

- (1) The business partners invoices must state the precise order number of AGF. The business partner shall be responsible for possible delays or additional costs incurred owing to non-compliance with this obligation. AGF is entitled to return improper invoices and to request a proper invoice.
- (2) The payment shall be made, if not otherwise agreed, within 30 days upon receipt of the invoice and after the appropriate discount, if applicable, has been taken.
- (3) Decisive for the payment deadline is the day of receipt of the invoice or, with pre-issued



invoices, the day of the full receipt of the goods by AGF.

- (4) AGF shall be entitled to rights to retention and to offset within the statutory extent.

### **IX. Reports of defects**

- (1) AGF will report obvious defects in fresh goods immediately; for all other products, defects will be reported within five (5) days from the receipt of the full delivery by AGF.
- (2) In case of hidden defects, the deadline for reporting a defect is one week from the discovery of the defect. Payment of an invoice shall not be considered an acknowledgement of the flawlessness of the delivered goods.
- (3) Upon request, the business partner must inspect goods for which a report is made immediately, and for goods other than fresh goods within 5 days, at its costs, and with the actual existence of a defect, to transport the goods away at its costs. If the goods are not picked up within this deadline, AGF is entitled to store the goods at the costs and risk of the business partner or – in case of danger of spoilage – to sell or destroyed these.
- (4) AGF is entitled to the statutory claims for defects to the full extent.
- (5) AGF is also entitled, without the consent of the business partner, to remedy the defect itself if there is a need to do so, in particular if there is a special urgency and the business partner is unable to, or if it is unreasonable to expect the business partner to meet the requirements within the allotted period of time. In such cases, AGF is entitled to charge the business partner for the incurred costs. § 323 Par. 2 BGB will apply accordingly to the setting of a deadline. AGF has to inform the business partner about the personal remedy of the defects.
- (6) The statutory period of limitations shall apply.

### **X. Product liability/indemnification**

- (1) The business partner undertakes to indemnify us from all claims asserted by third parties owing to physical injuries (i.e. damages owing to the death or the injury to the body or the health of a person) or property damage, insofar as this damage is the result of the delivered product for which the business partner is responsible.
- (2) Within the scope of the business partner's liability for damage events in terms of Section X, Clause I (1), the business partner is also obligated to reimburse all expenses in accordance with §§ 683, 670 BGB as well as in accordance with §§ 830, 840, 426 BGB that arise from or are correlation with recall carries out of AGF. AGF will inform the business partner about the contents and scope of the recall measures which are to be carried out – insofar as possible and deemed reasonable – and give it the opportunity to make a statement. This shall have no effect on other legal claims.
- (3) The contractor has to maintain insurance, coverage of at least €5,000,000.00 for physical injury, property damage and financial loss, maximized at least twice annually, and at least €100,000.00 coverage for coincidental damage to buildings, facilities, machines, etc., caused while carrying out repairs or replacements for Agrarfrost.

For the first time at the beginning of the relationship, and consequently at the beginning of each calendar year, the contractor has to submit an insurer's confirmation to AGF with the following details:

- Insured object
- Sums insured
- Business description
- Possible excesses (deductibles)
- Premium payment for the insurance period



- (4) Further claims for damages of AGF shall remain unaffected.

#### **XI. Property rights of third parties**

- (1) The business partner assumes responsibility that no third-party property rights are infringed upon through the deliveries/products sold, for example in terms of the products. The packaging or labelling as well as in terms of any advertising claims made of the products´ behalf.
- (2) If a claim is asserted against AGF by a third party owing to the aforementioned infringement of commercial property rights of third parties, the business partner undertakes to indemnify AGF from all such claims, rights and receivables of third parties against AGF unless it can prove that it is not responsible for the infringement of property rights. The indemnification shall also comprise the costs and expenses of the defense of AGF against such claims, rights and receivables of third parties.
- (3) The business partner further undertakes, in the event that a claim is asserted according to Par. (2), to support AGF by providing all of the pertinent information and documents required for defending AGF against the assertion of the claim. AGF will reasonably take the interests of the business partner into consideration hereby.
- (4) The statute of limitations of the claim for indemnification of AGF against the business partner is oriented to the statutory regulations.
- (5) Incidentally, the statutory warranty and liability provisions shall remain unaffected.

#### **XII. Confidentiality and changes**

- (1) Collateral agreements, amendments, addendums or restrictions to these conditions and the written contents of the contract require a written form. Verbal ancillary agreements are invalid. This shall also apply to ancillary agreements, changes, addendums or restrictions to this written form clause.
- (2) If provisions of these conditions or parts thereof are or become invalid, this shall have no effect on the validity of the Terms of Purchase and the contract on the whole.
- (3) Further regulations are included in the attached „Confidentiality Agreement“.

#### **XIII. Place of performance/place of jurisdiction**

- (1) The place of performance and place of jurisdiction is the registered seat of AGF. AGF is however entitled to also file against the supplier at its registered seat.
- (2) German law applies; the validity of the UN Convention on Contracts for the International Sale of Goods is excluded.

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Änderungsgrund: Neue Verantwortlichkeit,  
eindeutigere Formulierung

Verantwortlich für das Dokument

Leiter Einkauf