

AGRANA FRUIT PURCHASE ORDER TERMS AND CONDITIONS

1. **CONDITIONS OF ACCEPTANCE:** Acceptance of this Order by Seller is subject to the terms herein, on the face of this purchase order and the technical descriptions or specifications which are incorporated herein by reference ("Order"). This Order (including the terms and conditions set forth on the face hereof) shall control and govern all terms of sale. AGRANA FRUIT Group, ("AGRANA FRUIT") hereby notifies Seller that AGRANA FRUIT rejects any attempt by Seller to limit or condition its liability for breach or damages arising out of its performance or non-performance of this Order. The rights and remedies set forth in this Order are cumulative and are in addition to, and not in lieu or exclusive of, and AGRANA FRUIT hereby expressly reserves all legal and equitable rights and remedies, including, without limitation, all rights and remedies to which AGRANA FRUIT is entitled under the applicable laws. As used herein, "Goods" shall mean any goods and/or services which are the subject of this Order.
2. **ENTIRE AGREEMENT:** This Order together with AGRANA FRUIT's specifications and any other agreement signed by AGRANA FRUIT, constitutes the entire agreement between the parties regarding the Goods referred to herein, and supersedes all previous negotiations and understandings.
3. **ASSIGNMENT:** Seller may not assign its rights or obligations under this Order without AGRANA FRUIT's prior written consent, which consent shall not be unreasonably withheld or delayed.
4. **INVOICING/SHIPPING INSTRUCTIONS:** Seller shall:
 - (a) Include in each shipment separate packing slips showing AGRANA FRUIT order number, AGRANA FRUIT item or mark number, description and quantity shipped.
 - (b) Accept payment according to the terms specified on the face of this Order.
 - (c) Include the following information on each invoice: AGRANA FRUIT order number, AGRANA FRUIT item number, mark number, description and quantity shipped.
 - (d) Include cash discounts on all invoices.
 - (e) On all prepaid shipments chargeable to AGRANA FRUIT, attach transportation receipt to the invoice, as AGRANA FRUIT will only pay for actual freight cost incurred.
 - (f) Notify AGRANA FRUIT, if applicable: (i) number of packages, size, weight; (ii) method of protection during shipment; and (iii) suggested method for storage and protection upon arrival at destination.
5. **GOODS:** The Goods shall conform in all respects to the description on the face hereof, and/or AGRANA FRUIT's then current specifications furnished to Seller. The Goods, including, without limitation, tools and equipment shall be new, of first class commercial type and of the latest approved design, unless otherwise specified on the face of this Order. Workmanship and materials shall be of the best quality and free from defects that might render the Goods unsuitable or inefficient for the purpose for which it is to be used. Seller warrants and guarantees its Goods for the period of time normally specified for the type of Goods involved, but in no event for less than twelve (12) months from date of final acceptance. During the warranty period, all Goods or parts disclosing defects in design, material and/or workmanship shall be replaced and delivered to the job site by Seller, without cost or delay to AGRANA FRUIT. This warranty is in addition to and not in lieu of, any other Warranties or guarantees made by Seller or created or implied as a matter of law. The above warranties, as well as all other warranties contained herein, including, without limitation, the warranties in paragraphs 6, 8, 10, 11, 12, 13, 20, 21, 23, 27 and 28 shall be collectively defined as "Warranties".
6. **INFRINGEMENT:** Seller warrants that Goods sold hereunder and any uses proposed by Seller or reviewed by AGRANA FRUIT with Seller do not violate the trademark, patent, copyright or trade secret rights of any person or entity, and Seller will defend AGRANA FRUIT and save it harmless in any litigation for misappropriation of trade secrets, unfair competition and trademark, patent or copyright infringement which may arise out of the use or sale by AGRANA FRUIT of the Goods herein ordered.
7. **GOVERNING LAW:** This Order between AGRANA FRUIT and Seller shall be governed by the laws of France without regard to its conflict of laws provisions.
8. **Food and Drug Regulation GUARANTY:** Seller hereby guarantees and warrants that any materials sold by it hereunder shall not at the time of delivery thereof to AGRANA FRUIT, or when used as intended by AGRANA FRUIT, be adulterated or misbranded and shall comply in all respects with all applicable food, drug, health and cosmetic laws and regulations. This warranty is in addition to and not in lieu of any other warranties or guarantees made by Seller or created or implied as a matter of law.
9. **MEDIATION:** The parties will attempt in good faith to promptly resolve any dispute arising out of this Agreement by negotiations between representatives who have authority to settle the controversy. If unsuccessful the parties shall engage in non-binding third-party mediation, with fees and expenses of such mediation apportioned equally to each side. The party seeking relief under this Agreement shall compile a list of three (3) mediators and sent it to the other party. Within five (5) business days, the other party shall either (i) select one of these three mediators, or (ii) send a new list of three mediators to the first party. If the parties cannot agree on a mediator, then the mediation shall be conducted by two (2) mediators with one being chosen by each party. Any dispute not resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in accordance with the terms of this Agreement.
10. **DELIVERY:**
 - (a) The time of delivery shall be as stated. Time is of the essence; however, Seller shall not be liable for loss or damage arising from a Force Majeure event. A "Force Majeure" event shall be a cause for delay not under the reasonable control of Seller. In the event of such a delay, the delivery time shall be extended to include time by reason of Force Majeure, unless such extended delivery time makes the use of the Goods impractical, in which case AGRANA FRUIT may terminate this Order. Otherwise, the delivery time shall not be extended beyond the date specified by AGRANA FRUIT, unless AGRANA FRUIT has agreed to an extension in writing. Seller may not rely on a course of performance, prior course of dealings or trade usage to imply an agreement to extend the time of delivery specified by AGRANA FRUIT, or otherwise amend, alter or negate any terms of this Order or rights and remedies otherwise provided to AGRANA FRUIT by the applicable laws, or at law and equity.
 - (b) If delivery date(s) cannot be met, Seller must immediately inform AGRANA FRUIT in writing of Seller's best possible delivery date(s) subject to AGRANA FRUIT's acceptance. In addition to any other rights and remedies AGRANA FRUIT may have under this Order or provided by law, if deliveries are not made at the time agreed upon, AGRANA FRUIT may request that Seller ship the Goods by other than designated routing to expedite delivery (cost of alternative means of shipment shall be borne by Seller), cancel this Order in whole or in part and purchase comparable Goods elsewhere and hold Seller accountable for any loss or additional cost arising from such expedited delivery or cancellation.
11. **INSPECTION:**
 - (a) The Goods ordered hereunder are subject to inspection and test by AGRANA FRUIT at reasonable times and places, including the period of manufacture and in any event prior to final acceptance. Final acceptance shall be conclusive except as to latent defects, fraud or gross mistakes that amount to fraud;
 - (b) AGRANA FRUIT shall not be under any obligation to inspect the Goods. The fact of any inspection by AGRANA FRUIT shall not absolve Seller of any liability.
 - (c) Seller shall promptly pay or reimburse AGRANA FRUIT for all costs and damages incurred by AGRANA FRUIT, including without limitation, costs for packaging, handling, transportation, recall, destruction, production and other administrative costs including legal fees, which arise or result from the delivery of Goods by Seller that is not in accordance with the Warranties or any other term in this Order.
 - (d) Acknowledgement of receipt on packing slips, bills of lading or other documents shall not constitute acceptance. Goods that are delivered in quantity may be inspected by sampling.
 - (e) If any Goods are defective or otherwise not in conformity with the requirements of this Order, AGRANA FRUIT may reject them or require correction(s). There shall be an adjustment of any payments made for rejected Goods, either by Seller's refund or by a deduction from AGRANA FRUIT's subsequent remittances. Rejected Goods shall be removed and the Goods shall be corrected or replaced promptly at Seller's expense and, if returned, shall be identified by Seller. If rejected Goods are not promptly corrected, AGRANA FRUIT may, at its option, elect to do some or all of the following (i) obtain such Goods or similar Goods elsewhere and charge Seller with any cost increase caused thereby; (ii) terminate this Order for default under paragraph 17 hereof; (iii) accept the Goods at a reduction in price determined in accordance with paragraph 15 hereof and (iv) seek other remedies and damages. This enumeration of remedies does not preclude other AGRANA FRUIT remedies available under the applicable laws, at law or in equity.
12. **WORK ON AGRANA FRUIT'S PREMISES:** If this Order covers labor, contract or construction work or work of any nature on AGRANA FRUIT's premises, all such work shall be performed in compliance with AGRANA FRUIT's General Conditions of the Contract for Construction/Installation which becomes at that time an integral part of this Order. Seller agrees it has no authority to hire any persons on AGRANA FRUIT's behalf and each person employed or used by Seller shall be Seller's employee, servant or agent and not AGRANA FRUIT's, as Seller is performing all of said work as an independent contractor. Seller indemnifies and saves AGRANA FRUIT harmless from any and all judgments, costs, expenses, including attorney's fees, for damaged property or personal injuries (including death) which may be sustained by Seller, its employees, AGRANA FRUIT's employees or third parties, arising out of or in any way connected with such work done on AGRANA FRUIT's premises, except to the extent such damaged property or injury (including death) is caused by the negligence or willful misconduct of AGRANA FRUIT.
- Prior to commencing any such work, Seller shall provide certificates evidencing adequate insurance indemnifying Seller and AGRANA FRUIT against such claims and naming AGRANA FRUIT as an additional insured.
13. **NON-CONFORMING GOODS:** Seller will not substitute non-conforming Goods or back order such Goods without AGRANA FRUIT's prior written approval, and AGRANA FRUIT may reject all or part of any shipment which contains non-conforming Goods. AGRANA FRUIT's rights under this paragraph are in addition to, and not in lieu of, any other remedies available under this Order, the applicable laws, at law or in equity.
14. **CHANGES:** AGRANA FRUIT may change any of the terms of this Order by a written change order at any time. Any changes in Seller's costs of performance arising out of such a change order shall be reflected in a price adjustment in accordance with paragraph 15. Pending such price adjustment(s), Seller shall proceed with the Order as changed.
15. **PRICE ADJUSTMENT:** No increase in price will be accepted without AGRANA FRUIT's prior written acceptance. Any price adjustment must be initiated by written demand. If this Order is fully performed prior to such demand, any reduction or increase in price will be made on the basis of a change in Seller's cost. Seller shall furnish AGRANA FRUIT adequate cost information and give AGRANA FRUIT access to verify such cost information. Each price adjustment or change shall be evidenced by an appropriate change order from AGRANA FRUIT.
16. **ESCALATOR PRICE INCREASE:** No increase in the price stated on the face of this Order will be paid by AGRANA FRUIT unless it is specifically provided for on the face of this Order, or otherwise authorized in writing by AGRANA FRUIT.
17. **TERMINATION FOR DEFAULT:** If Seller fails to deliver the Goods within the time specified, or otherwise defaults in performance, AGRANA FRUIT may terminate this Order in whole or in part (reserving its rights to damages and otherwise at law and equity). In the event of termination for default:
 - (a) Seller shall continue performance of any non-terminated portion of this Order, and AGRANA FRUIT may obtain elsewhere the portions of the Goods affected by the termination; and
 - (b) AGRANA FRUIT may, at its option, require Seller to transfer to AGRANA FRUIT all materials, work in process, completed supplies, tooling, plans and specifications allocated to the terminated portion of this Order. AGRANA FRUIT shall, in this event, pay Seller the fair value of such items. AGRANA FRUIT's rights under this paragraph are in addition to, and not in lieu of, any other remedies available under this Order, the applicable laws, at law or in equity.
18. **TERMINATION:** AGRANA FRUIT may terminate this Order in whole or in part at any time whenever the Goods specified herein are no longer required by AGRANA FRUIT. If, upon such termination, AGRANA FRUIT and Seller cannot negotiate a mutually satisfactory settlement within a reasonable time, AGRANA FRUIT will pay Seller, and Seller agrees to accept without duplication of any items, the following as full settlement:
 - (a) Contract price for completed items;
 - (b) Seller's direct cost allocated to terminated portion of this Order; or
 - (c) Reasonable direct costs of Seller in settling claims arising out of this termination, and in protecting property in which AGRANA FRUIT has or may acquire an interest. In no event shall AGRANA FRUIT be liable for any consequential, indirect, special or punitive damages.
19. **TAXES:** The prices stated in this Order shall include all applicable taxes in effect on the date hereof and levied or assessed with respect to the production, sale or use of the Goods covered by this Order or components thereof.
20. **NON-DISCLOSURE:** Seller agrees not to use, release or disclose to third parties any information concerning the Goods and/or process(es) involving the subject matter of this Order without the prior written consent of AGRANA FRUIT.
21. **EQUAL OPPORTUNITY:** When applicable, the Seller is an EEO/AA employer and agrees to comply with all related applicable regulations.
22. **HEADINGS:** The titles of the paragraphs of this Order are for convenience only and shall not affect their interpretation.
23. **CREATIVE MATERIALS:** Unless otherwise noted on this Order, all rights pertaining to creative materials and production materials (hereinafter the "Creative Materials") ordered shall be deemed to be "work for hire" which is owned by AGRANA FRUIT and which may be used by AGRANA FRUIT in its sole discretion. When such concept shall not exist under applicable law, Creative Materials shall be assigned exclusively to AGRANA FRUIT on an on going basis. As a consequence, any and all intellectual property and other rights in the Creative Materials shall be exclusively assigned to AGRANA FRUIT upon its creation for the entire duration of intellectual property rights for a worldwide use. It is hereby acknowledged that the rights assigned comprise, *inter alia*, (i) a reproduction right which is defined as the right to make, or to have third parties made, copies of the Creative Materials for use in any place (whether public or not). This right includes the right to reproduce, print, record, position, install and otherwise manipulate the Creative Materials in whole or in part, in any way or form, by any means and on any current or future medium, known or unknown including digital, magnetic, paper or derivatives, microfilms, videos, disks and recordings or downloading process; (ii) a representation right which is defined as the right to communicate, disseminate, disclose, publish to the public and exploit the Creative Materials, in any way, for use in any place (whether public or not) including interactive data communications, downloading, remote transmission, transmission, terrestrial networks, satellites, cable, on line networks such as Internet; (iii) a right to adapt, modify translate, transform, mix, assemble, transcribe, the Creative Materials in whole or in part or integrate it in other works; (iv) a right to distribute, commercialize or broadcast, the Creative Materials by any means; (v) a right to grant any third party the right to reproduce, represent, edit, broadcast, commercialize the Creative Materials, in any way or form, by any means or medium.
24. **TITLE:** Title to the Goods shall pass to AGRANA FRUIT, f.o.b. destination, unless otherwise stated on the face of this Order. Seller represents and warrants that good title to the Goods will pass free and clear of all charges, claims and liens of any nature.
25. **INDEMNIFICATION:** Seller shall indemnify and hold harmless AGRANA FRUIT and its agents, employees, officers, directors, subsidiaries, affiliates, parent corporation, successors and assigns from and against all third party claims, demands, losses, attorney's fees ("claims"), arising out of or resulting from Seller's performance of the work, breach of the Warranties or Seller's negligence or willful misconduct. This obligation shall not extend to claims to the extent caused by AGRANA FRUIT's negligence or willful misconduct.
26. **CLAIMS:** All claims will be promptly made to AGRANA FRUIT in writing within one (1) year and no claims will be made for less than One Hundred US Dollars (\$100.00) or the equivalent in the applicable local currency.
27. **COMPLIANCE WITH LAW:** Seller's performance under this Order shall be in compliance with all applicable federal, state and local laws, ordinances, regulations, rules and statutes ("Laws"), including those Laws that relate to safety, transportation, environmental and including, without limitation, import and export of Goods.
28. **CHILD LABOR:** Seller warrants that all workers engaged in the manufacture or distribution of the Goods will be treated in full compliance with the applicable laws and regulations of the country of manufacture, including but not limited to provisions regarding compensation, safety, non-discrimination and other conditions of employment. Additionally, Seller warrants that no person shall be employed at an age younger than fifteen (15) or younger than the age for completing compulsory education in the country of manufacture where such age is higher than fifteen (15). Seller further warrants that no imprisoned labourer shall be engaged in the manufacture or distribution of the Goods.
29. **RECALL:** AGRANA FRUIT shall have the sole right, exercisable in its discretion, to initiate and direct the content and scope of a recall, market withdrawal, stock recovery, product correction and/or advisory safety communication (any one or more referred to as a "Recall Action") regarding the Goods. At AGRANA FRUIT's option, AGRANA FRUIT can direct Seller to, and upon such direction Seller shall, conduct such Recall Action. AGRANA FRUIT shall determine, in its discretion, the manner, text and timing of any publicity to be given such matters. In the event a Recall Action is initiated or directed by AGRANA FRUIT, Seller agrees to fully cooperate and take all such steps as are reasonably requested to implement the Recall Action in a timely and complete manner. Any and all action to be taken in connection with a Recall Action shall be in accordance with all applicable Laws. Seller shall bear the costs associated with any Recall Action which results from such Goods not complying with Seller's Warranties under this Order.
30. **SURVIVAL:** All representations and Warranties of the Seller including, without limitation, paragraphs 20, 23, 24 and 25, all rights and remedies of AGRANA FRUIT and any other provisions hereof which by their express terms or by implication are to survive, shall survive the termination of this Order.
31. **INSURANCE:** Supplier shall carry with companies satisfactory to AGRANA FRUIT: (i) worker's compensation and employee Liability Insurance and public Liability Insurance including contractual liability and products liability coverage (with Broad Form vendor's endorsement naming AGRANA FRUIT as an additional insured) with a combined single limit of not less than € 5,000,000. Supplier shall submit certificates of Insurance evidencing the above coverage (which shall include an agreement by the insurer not to cancel or materially alter its coverage except upon thirty (30) days prior written notice to AGRANA FRUIT) to AGRANA FRUIT for its approval before entering upon performance of this Agreement. Product Liability Insurance shall continue in effect for AGRANA FRUIT's benefit for a period of one (1) year from the date of the last delivery of Material to AGRANA FRUIT. In the event of Supplier's failure to furnish said certificates of Insurance or cancellation of any required Insurance, AGRANA FRUIT may, as its option, terminate this Agreement with thirty (30) days prior written notice to supplier. Supplier shall have the opportunity to cure said termination notification by providing certificates of Insurance within fourteen (14) days of notification by AGRANA FRUIT to terminate this Agreement.