



General Terms and Conditions and Terms of Delivery – AGRANA Fruit Germany GmbH

Our offers, deliveries and services shall be carried out according to the following conditions as well as potential separate contractual agreements exclusively. Contradictory terms and conditions as well as other agreements deviating from the present conditions shall be valid with our express written consent only. Neither our tacit receipt of deviating terms and conditions, nor the acceptance or execution of an order by ourselves may be deemed an acceptance of such terms.

1. Offers

Our offers are not binding. Orders shall become binding by means of our written order confirmation only.

2. Prices

Our prices are given in EUROS free to destination including packaging and transport, for a minimum purchasing quantity of 600kg, plus applicable VAT.

3. Payment

Invoices shall be due within 30 days as of date of invoice without any deduction. Cheques are accepted as payment only after they have been cashed in and credited as of the value date. In the event of arrears, we shall charge default interest to the amount of overdraft interest according to normal banking practice, but at least to the amount of the legal default interest. We reserve the right to assert further damage exceeding such interest. The client shall be entitled to withhold payments or to set them off against counterclaims only if their counterclaims are uncontested or recognized by declaratory judgment.

4. Reservation of title

- 1) We reserve title to the goods until all our claims towards the customer arising from the business relation are settled, including claims incurring in the future, also including those from contracts concluded at the same time or later. The reservation of title serves as security of our balance claim for current accounts.
- 2) If the customer joins our goods with other items into a homogeneous object, it is deemed as agreed that the customer transfers the joint title to us on a pro rata basis and keeps the object in custody for us. The acquisition of property according to Section 950 German Civil Code (BGB) is excluded for the manufacturing or processing on our behalf by the customer, without further obligations for us arising from this action. We will become co-owner of the object, which is developed in this context, proportionately to the invoice value (incl. VAT) of our goods, which are goods subject to reservation of title in order to secure all our titles and claims.
- 3) If the customer sells the goods and goods subject to reservation of title supplied by us after the manufacturing or processing, the customer agrees to cede to us the entire claims including all their ancillary rights towards their customers resulting from the sale of our goods subject to reservation of title, now, until the complete repayment of all of our claims and services. At our request, the customer is obliged to notify the third-party purchasers of such cession and to provide us with the information necessary to assert our rights and to hand over the documentation to us. If the value of our existing securities exceeds our overall claims by more than 20%, we shall be obliged to release securities at our choice on request of the customer in this respect.
- 4) The customer is entitled neither to pledge the goods delivered by us nor to transfer them as security. In case of distraints and seizures or other instructions by third parties, the customer shall be obliged to immediately notify us thereof. In the event of behaviour contrary to the contract on the part of the customer, including but not limited to delay of payment, we are entitled to take back the goods after sending a reminder, and the customer is obliged to hand them over. The assertion of the reservation of title and the distraint of our goods subject to reservation of title by ourselves shall not be deemed rescission from the contract. In the event of the customer filing an application for the institution of insolvency proceedings, we are entitled to rescind from the contract and to claim the immediate restoration of the goods.
- 5) If the reservation of title is not legally valid according to the laws of the country of destination, but this country, however, allows to reserve other rights to the goods, we may exercise all rights of this kind. The customer undertakes to cooperate in case of corresponding actions, which we intend to carry out for the safety of our ownership or for the safety of other rights instead of the ownership of the goods.

5. Liability for defects

- 1) Notices of defects shall be communicated immediately. If a defect exists, replacement as subsequent performance will be carried out. In case of remedy of defects, we are obliged to bear all necessary expenses, including without limitation transportation costs, for the purpose remedying the defects. If the remedy of defects fails, the customer may claim rescission or reduction according to their choice.
- 2) We shall be liable pursuant to the legal provisions if the customer asserts damage claims resulting from wilful intent or gross negligence of our agents or vicarious agents. Unless we are accused of wilful breach of contract, the liability for damages shall be limited to the predictable damage which occurs typically. We shall be liable pursuant to the legal provisions if we culpably infringe a material contractual obligation; in such case the liability for damages shall be limited to the predictable damage occurring typically. The liability for culpable violation of life, body or health shall remain unaffected; this shall apply for the mandatory liability pursuant to the German Product Liability Act ProdHaftG (*Produkthaftungsgesetz*) as well. Further claims are excluded.
- 3) The warranty period shall be twelve months as of delivery of the goods.

6. Containers

The containers including accessories (filters, outlet connections with caps etc.) shall remain our property. They may be used for the processing of our fruit preparations/goods only. The containers shall be returned in proper condition without damages within six weeks after delivery. For longer periods of idle time, we reserve the right to invoice a charge per day and container to the amount of EUR 25.00.

7. Force Majeure

In the event of Force Majeure hindering the manufacture and the shipment of our goods, we shall be exempt from the obligation to deliver.

8. Place of performance and place of jurisdiction

The place of performance and the place of jurisdiction shall be Konstanz for both parties. However, we are entitled to take legal action at any other place of jurisdiction. For all legal relations between us and the customer, German law applies exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods as of 11 April 1980 shall be excluded.

Konstanz, on 30 November 2010