



# Agrana Fruit

## Sales Terms & Conditions

### 1. SCOPE OF APPLICATION

**1.1** All the supply of products ("Products") and provision of accompanying services by Agrana Fruit SAS, 17 avenue du 8 mai 1945, 77 290 Mitry Mory, and/or its affiliates ("**AF**") are governed by these general Sales Terms and Conditions ("**AF Sales General Terms**"). By placing a Purchase order ("**PO**") with **AF**, the customer ("**Customer**") is deemed to have read and accepted the **AF Sales General Terms** and to have renounced his own general terms and conditions, if any.

**1.2** Any Terms and Conditions of the **Customer** that deviate from or supplement these **AF Sales General Terms** shall apply only with our express written consent.

**1.3** **AF's** silence regarding such differing terms and conditions of the **Customer** shall in particular not be deemed to be acknowledgment or consent, and this shall also apply to future contracts.

**1.4** In case of conflicting provisions, the provisions of the signed contract between **AF** and the **Customer** will prevail.

**1.5** **AF** expressly reserves the right to modify the **AF Sales General Terms**.

### 2. OFFERS AND ORDERS

**2.1** Offers are non-binding (also with regard to price, quantity and delivery conditions). Declarations of acceptance by the **Customer** shall be deemed binding offers. The contract shall only be deemed concluded upon dispatch of a written order confirmation by **AF** or by simply fulfilling the order by **AF**.

**2.2.** **AF** offers are terminated at the earliest possible date between end of the Price validity, or when quantities have been fully delivered. No automatic prolongation of Price offer is possible beyond the termination date. **AF** will honour **POs** provided good issue date is within the Price Validity period. **POs** placed after the Offer termination will not be honoured unless placed based upon new Price offer shared by **AF**.

**2.3** Any **PO** sent to **AF** by the **Customer** shall only become binding to **AF** after **PO** written confirmation by **AF**. **POs** which are not in accordance with the latest and valid price offer shared by **AF** will not be accepted.

### 3. PRICES

**3.1** Prices shall be agreed in writing and, unless otherwise agreed, shall be exclusive of value added tax "VAT" or similar taxes, cost of transport, customs duties and excise of other duties payable.



**3.2** Prices are valid for the reference period solely as indicated in the price offer, without prejudice to the right of **AF** to adjust prices or delist Products during the reference period at its discretion.

**3.3** In case of cancellation of an **PO** or Call-off or cancellation or early termination of a **Purchase Contract** and **PO** by **Customer**, **AF** has the right to claim compensation damages.

#### **4. DELIVERY**

**4.1** All transport is carried out in accordance with the agreed Incoterm in the **PO**, or in absence hereof Ex Works.

**4.2** **AF** shall use its reasonable endeavours to comply with any date or time agreed for delivery. Delivery dates and delivery periods are however non-binding unless they are expressly designated as binding. **AF** is entitled to make the contractual delivery in partial quantities. Additional costs incurred due to express or urgent requests of the **Customer** shall be borne by the **Customer**.

**4.3** **AF**'s obligation to supply shall be suspended as long as the **Customer** is in arrears with any payment towards **AF**, without any notice and without prejudice to **AF**'s right to claim compensation.

#### **5. TRANSPORT, STORAGE AND RISK**

**5.1** Transport and storage of **AF** goods must be done in accordance with the Products specifications provided by **AF**.

**5.2** If the delivery is delayed for a reason for which the **Customer** is responsible, the risk is passed to the **Customer** from the date of receipt of the notification of readiness for delivery.

**5.3** In the event of a justified claim against **AF** for late delivery not caused by force majeure, the maximum amount of damages for which **AF** may be held liable, is limited to the value of the affected Products. These measures shall be considered as full indemnification to the **Customer** who shall not be entitled to make any further claim or demand on any basis whatsoever.

#### **6. QUALITY AND QUANTITY**

**6.1** **AF** warrants that the Products will be of satisfactory quality and will comply with the specifications, if any, agreed to in writing for the Products. All other warranties are expressly excluded to the fullest extent permitted by law.

**6.2** For some Products, **AF** may provide a quality report as agreed between **Customer** and **AF**. Such Quality report shall be conducted by an independent laboratory appointed by **AF**. **AF** cannot be held liable for any consequences that may arise directly or indirectly from the use of the Products by the **Customer** before the full results of such quality report are available.

**6.3** The quantity recorded by **AF** upon dispatch shall be decisive.



## 7. ACCEPTANCE, INSPECTION AND CLAIMS

**7.1** The **Customer** is obliged to take over the Products immediately after arrival at the agreed place of delivery and to check their condition of packaging and quantity and quality within **3 working days**. At the **AF's** request and in extreme emergencies the **Customer** is obliged to take over the Products also outside normal business hours and check the quantity. If the **Customer** fails to do so, **Customer** shall bear any disadvantage resulting therefrom himself and compensate the **AF** accordingly. The Products shall be deemed to have been accepted by the **Customer** upon unloading.

**7.2** The **Customer** is obliged to inspect the Products, their condition of packaging, the quality and quantity of the Products and their compliance with the Specifications, if any, at the latest within **3 working days** after unloading.

**7.3 AF** must be notified of claims and complaints in writing at the latest within 3 days after unloading, stating the type and extent of the defect. Defects that could not have been discovered even after diligent inspection must be notified to **AF** within three (3) working days after discovery within the shelf life of the Products. Any such claims and complaints must be addressed to **AF** by email or registered letter (with return receipt).

**7.4 AF** will not accept any claims after expiration of aforementioned notice period or at the latest by end of shelf life of the Products and the Products shall be deemed to have been approved.

**7.5** In the event of complaints about defects, the **Customer** shall keep the goods freely accessible for inspection by **AF** or by third parties commissioned by **AF**. If a complaint proves to be unjustified, the **Customer** shall reimburse **AF** for all expenses incurred by **AF** as a result. In the meantime, the **Customer** shall take any provisional measures that are in the interest of the parties. The **Customer** must always prove that the defect was already existed at the time of delivery.

**7.6** The **Customer** loses all rights to claim for defects if the Products have been improperly handled or stored by or on behalf of the **Customer**.

**7.7** For justified or accepted quality claims, **AF** will, at its sole discretion (i) supply additional or replacement Products at its own expense, or (ii) partially or in full refund the invoiced amount or issue a credit note. These measures shall be deemed to be full indemnification to the **Customer**, who shall not be entitled to make any further claim or demand on any basis whatsoever.

**7.8** The **Customer** must return the signed version of Tote guideline within one week of receipt. In case of an update of this document, the new version shall be acknowledged by **Customer**.

## 8. PAYMENTS

**8.1** Payments are to be made by **Customer** to **AF** under the terms of the invoice as per the **AF's** issued invoice. The amounts shown on the invoice shall be due and payable without any deductions or set-off unless agreed to in writing by **AF**.



**8.2** Payments shall be made to the bank account of **AF's** registered office specified in the invoice.

**8.3** Any claim related to the invoice must be submitted to **AF** within 7 calendar days upon receipt of the invoice, by email or registered letter (with return receipt).

**8.4** Prices shall be paid in the currency specified in the invoice.

**8.5** The mere fact of non-payment, even partial, by the stated due date shall be deemed to constitute default without notice to the **Customer**.

**8.6** If the **Customer** fails to meet any payment date, (i) all other outstanding invoices shall become immediately due and payable without the need for a reminder or any notice, and (ii) **AF** reserves the right to suspend or cease further deliveries to **the Customer**, or (iii) **AF** declares the withdrawal from the contract and claim damages after granting grace period of 14 days. In case of default and even in the event of non-culpable default in payment, the **Customer** undertakes to reimburse us for any dunning and collection fees **AF** may incur, provided such expenses are necessary for appropriate legal action.

**8.7 AF** may define and communicate to the **Customer** a total credit limit, which may be updated anytime depending on business performance and other parameters at sole discretion of **AF**. If the total amount of due invoices exceeds the credit limit, **AF** reserves the right to stop deliveries.

**8.8** In case **AF** and **Customer** agree that Products shall be supplied and/or invoiced to a third party, **Customer** shall remain fully liable for the proper execution of the **PO**.

## **9. RETENTION OF TITLE**

**9.1** Until full payment of the purchase price plus any delivery charges, interest on arrears and reminder charges as well as other claims to which **AF** is entitled against the **Customer** from this or other legal relationships with the **Customer**, the delivered goods shall remain the property of **AF** ("reserved goods"). In the event of seizure or any other claims by third parties, the **Customer** shall be obliged to point out the **AF's** right of ownership and to notify **AF** immediately.

The **Customer** is obliged to take proper care of and store the delivered goods. The **Customer** is liable for damages of any kind as well as the loss.

In the event of default in payment, **AF** shall be entitled to take back **AF's** purchased goods subject to retention of title even without judicial assistance and without the consent of the **Customer**, or to demand that the **Customer** place them in a place to be determined by **AF** or hand them over to one of **AF's** agents.

The **Customer** shall be obliged, at **AF's** option and request, to return the reserved goods to **AF's** place of production. The expenses shall be borne by the **Customer**.

If goods are resold, the **Customer** shall assign to **AF** all claims including all ancillary rights and securities, accruing to him against the purchaser from the resale or processing of the



purchased goods until all of our claims against it have been satisfied, up to the invoice amounts. If the reserved goods are combined or blended with other goods, **AF** shall have a right to co-ownership of the new item in proportion of the value of the reserved goods and the value of the other product when combined and/or blended. If the product so created is resold, the **Customer** shall already assign to **AF** the aliquot purchase price from the resale at the time of the sale carried out by him.

## **10. FORCE MAJEURE**

**10.1** The agreed delivery dates and delivery periods and as well as fulfilment of **AF**'s obligations under the relevant **Purchase Contract** and/or **PO**, in whole or in part, shall apply unless unforeseeable circumstances or circumstances beyond the control of the contracting parties, such as all cases of force majeure (in particular acts of war, natural disasters including pandemics, transport damage, energy shortages including blackouts, strikes, wagon defects, transport blockades, import, export and transit bans, official and legal orders, labour disputes or crop failures, riots, interventions by higher authorities and all measures or events in connection with epidemics and pandemics such as, in particular, the COVID19 pandemic and/or its effects, and any unforeseeable, unavoidable and serious events).

Such circumstances entitle **AF**, even if they occur at subcontractors, to reasonably extend the delivery period or to withdraw from the contract. In such cases, the **Customer** shall not be entitled to assert claims against **AF** based on non-performance, delayed or partial performance. Each delivery is subject to the proviso that **AF** is also supplied accordingly by any subcontractors.

The same applies to a shortfall in production or production stoppage of our manufacturing plant due to the above-mentioned reasons of force majeure, as well as due to technical problems, malfunctions or shortages of labour, energy supplies, raw materials and equipment and/or their effects.

## **11. TERMINATION**

**11.1** Without prejudice to either party's other rights under this document, either party may terminate the contractual relationship in part or in full with immediate effect by giving notice to the other party by registered letter (with return receipt) or by courier if (i) a party commits a material breach of its contractual obligations, which cannot be remedied, or if remediable, is not remedied within thirty (30) days after notice thereof by the non-breaching party; (ii) a party becomes insolvent, enters into liquidation or bankruptcy or has a receiver appointed or enters into an arrangement for the benefit of creditors; or (iii) a party ceases or threatens to cease doing its business.

**11.2** Any **PO** in force at the time of the termination notice and the execution of which has not yet commenced, if any, shall be terminated at the discretion of the **AF**.

**11.3** At the effective date of termination, the **Customer** shall settle for and purchase all Products already manufactured or packaging materials purchased by **AF** in the framework of the contractual relationship between the parties. **Customer** shall settle any profit or loss of any raw materials purchased or covered by **AF** at request of the **Customer** that have not yet been used in any Products.



**11.4** Partial or total termination shall not affect the validity of the **AF Sales General Terms**. The articles 12, 13 and 14 shall in any case survive the termination or expiry of the contractual relationship between the parties.

## **12. LIMITATION OF LIABILITY**

**12.1 AF** is only liable for damages caused by gross negligence or intent. However, this limitation of liability does not apply to compensation for personal injury. **AF** shall not be liable for indirect damage, loss of profit, loss of interest, failure to make savings, consequential and pecuniary damage and damage arising from third-party claims. In case of gross negligence, the liability is limited to the value of the delivery of goods, but not more than the amount covered by our insurance. The **Customer** undertakes to transfer this exclusion of liability to his customers.

## **13. INTELLECTUAL PROPERTY RIGHTS**

**13.1 AF** retains the ownership of Intellectual Property it has developed solely related to the Products, including but not limited to specifications and recipes. **AF** may grant to the **Customer** the necessary license to use that Intellectual Property to the extent necessary for the use of the Products in the **Customer's** products; such license shall expire, but not for the Products already have been purchased from **AF** in the course of Sales contracts, once the **Customer** stops purchasing quantities of the Products from **AF**. Therefore, the **Customer** is not allowed to use **AF's** Intellectual Property for any further productions not related to **AF's** Products.

**13.2** The **Customer** shall remain the owner of Intellectual Property it has solely developed, with respect to the Products and shall grant **AF** the necessary license to use that intellectual property for the purpose of the contractual relationship between the parties.

**13.3** With respect to any Intellectual Property jointly developed by the parties, the ownership shall remain with **AF**, unless otherwise agreed in writing.

## **14. CODE OF CONDUCT**

**14.1** In the course of this agreement, both Parties agree to adhere to the AGRANA Code of Conduct, which is available at: [CODE OF CONDUCT \(agrana.com\)](http://agrana.com). **AF** 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 by the business partner itself or by a third party acting within the supply chain, it must notify **AF** immediately and agrees to take appropriate measures to stop the violation and minimize the damage. As a final measure, **AF** reserves the right to terminate this contract immediately.

## **15. CONFIDENTIALITY**

**15.1** Each party shall keep strictly confidential (a) the terms of the contractual relationship between **AF** and the **Customer** and (b) all confidential, sensitive or proprietary information concerning the other party's business and its products (including, but not limited to, technical



or commercial know-how, specifications, recipes, IP and processes) disclosed to it by the other party ("Disclosing Party") in writing, electronically or orally during the term of the contractual relationship between the parties, and shall not disclose it to any third party unless an authorized representative of the Disclosing Party has expressly consented to and signed such disclosure in writing.

## **16. MISCELLANEOUS**

**16.1** No modification, amendment or waiver of the **AF Sales General Terms** shall be binding upon either party unless made in writing and duly signed by both parties.

**16.2** If any provision of the **AF Sales General Terms** is or becomes invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be deemed to have replaced by a provision approximating as closely as possible to the economic intention of the Parties. The same applies by analogy to missing provisions.

**16.3** **AF** may assign its contractual obligations and/or parts thereof or delegate its obligations or assign its rights to other **AF** affiliates. **AF** may not assign its obligations under this document to any third party, except for the right of **AF** to assign any payment claims against the **Customer** to any third party without the consent of the **Customer**. The **Customer** shall not be entitled to assign any of its rights or obligations under the contractual relationship with **AF** to any third party (including affiliates) without the prior written consent of **AF**.

**16.4** Customary clauses shall be construed in accordance with Incoterms® 2010, and any reference to an Incoterm shall be a reference to, the Incoterms® 2010.

## **17. LAW AND DISPUTES**

**17.1** The **AF Sales General Terms** as well as all legal relations between the **Customer** and **AF** are governed by the laws of country in which **AF's** production site is located, as specified in **PO** and invoice.

**17.2** All disputes arising out of or in connection with the **AF Sales General Terms** or any legal relations between the **Customer** and **AF** shall be resolved amicably and in good faith negotiations. In the event any such dispute appears irreconcilable, the competent courts of the country in which of **AF's** production site as specified in **PO** and invoice shall have exclusive jurisdiction.