

General Terms and Conditions of Sale and Delivery of Optigrün international AG

in business transactions with entrepreneurs (B2B)

(General provisions, Special provisions for purchase contracts, Special provisions for contracts for work and services)

A. GENERAL PROVISIONS

I. Validity of the terms and conditions

The deliveries, services, offers and business relationship of Optigrün international AG (hereinafter referred to as "Supplier") to the customer/purchaser are based exclusively on these General Terms and Conditions (GTC). The scope of application of these GTC is limited to contracts with entrepreneurs. These GTC therefore also apply to all future business relationships, even if they are not expressly agreed again. The inclusion of any terms and conditions of the customer that conflict with, supplement or deviate from our GTC is hereby rejected. These shall also not apply if the Supplier carries out the delivery or service in the knowledge of deviating provisions of the customer and/or without expressly objecting to deviating terms and conditions of the customer.

II. Offer and conclusion of contract

1. Offers made by the supplier are subject to change and non-binding, unless otherwise stated in the order confirmation. Declarations of acceptance and all orders require the supplier's written or equivalent order confirmation to be legally valid.
2. Drawings, illustrations, dimensions and weights are only binding if this is expressly agreed in writing.
3. The supplier reserves ownership rights and copyrights to samples, cost estimates, drawings and other information of a physical and non-physical nature, including in electronic form; they may not be made accessible to third parties. The supplier undertakes to make information and documents designated as confidential by the customer accessible to third parties only with the customer's consent.
4. The customer assures that the documents made available to the supplier do not infringe the rights of third parties. The customer guarantees that the documents provided to the supplier, in particular drawings, plans, etc., are dimensionally accurate, are directly suitable for determining the contractually owed service and correspond to the actual circumstances.

III. Delivery deadlines, reservation of self-supply, force majeure, damages caused by delay

1. Unless otherwise agreed in individual cases, any delivery or performance deadlines communicated are approximate.
2. The start of an agreed deadline for the provision of services requires the clarification of all technical questions. The deadline for the provision of services shall not commence before the customer has fulfilled its obligations to cooperate in this regard.
3. The supplier is entitled to raise the defence of non-performance of the contract.

4. Compliance with an agreed delivery period or a precise time specification is subject to correct and timely delivery to the supplier. This shall not apply if it is clear from the contractual agreement that the supplier has assumed a procurement risk or if there is a case of an unlimited generic obligation. Furthermore, the supplier's obligation to perform shall not lapse due to the reservation of self-supply if the supplier has not concluded a congruent covering transaction with its suppliers with regard to the service to be provided to the customer or if it has culpably caused the non-fulfilment of this congruent covering transaction. The supplier shall notify the customer immediately of any delays that become apparent.
5. The delivery period shall be extended appropriately if non-compliance with the deadline is due to force majeure, e.g. energy and raw material shortages, strikes, lockouts, official measures, terrorist attacks, war, pandemics or epidemics, or the occurrence of other unforeseeable events beyond the supplier's control. The supplier shall immediately inform the customer of the existence of force majeure and the expected end of this circumstance. If the force majeure situation lasts for more than three months without interruption or if the delivery date is extended by more than four months due to several circumstances of force majeure, both the customer and the supplier shall be entitled to withdraw from the contract. In the event of force majeure, the assertion of claims for damages and other claims shall be excluded. The obligation to provide consideration shall lapse and any advance payments already made shall be refunded. The provisions of this paragraph shall apply mutatis mutandis if the circumstances occur at a subcontractor and affect the delivery to the supplier.
6. If a delivery deadline has been bindingly agreed between the supplier and the customer and the customer has incurred damage due to a culpable delay in delivery, the customer must notify the supplier of the exceeding of the delivery deadline within twenty-one (21) days of delivery of the goods. The notification must be made in writing (e-mail, letter, etc.). It must contain a list of the costs incurred as a result of the delivery deadline being exceeded, including invoices and any contractual penalties incurred. Claims by the customer for exceeding the delivery deadline shall lapse if the customer does not notify the supplier of the exceeding of the delivery deadline within twenty-one days of delivery. This does not apply to damages caused by delay that are based on a grossly negligent breach of duty by the user or on an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of the user.
7. The occurrence of a delay in delivery shall be determined in accordance with the statutory provisions. If the supplier is in default of delivery, the customer may demand lump-sum compensation for the damage caused by the delay. The lump sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of delay, but shall not exceed a total of 5% of the delivery value of the goods delivered late. The supplier reserves the right to prove that the customer has not incurred any damage or only significantly less damage than the above lump sum.
8. Partial deliveries are permissible within the agreed delivery periods, provided they are not unreasonable for the customer. In particular, a partial delivery is not unreasonable if the partial delivery can be used by the customer as intended and the delivery of the remaining ordered goods is ensured and the partial delivery does not result in significant additional expense or additional costs for the customer. I

IV. Scope of delivery

1. The scope of delivery and prices are determined by the supplier's written order confirmation.
2. We reserve the right to make design or shape changes during the delivery period that are attributable to technical improvements or legal requirements, provided that the delivery item is not significantly altered and the changes are reasonable for the customer.

3. Quantity deviations for bulk goods: Bulk goods (substrates) are natural products whose weights are subject to fluctuations. Quantity complaints that fall within the tolerance range of +/- 8% will not be recognised as such.

V. Cancellation costs

If the customer withdraws from a placed order without justification, the supplier may, without prejudice to the possibility of claiming higher actual damages, demand 10% of the sales price for the costs incurred in processing the order and for lost profits. The customer reserves the right to prove that no damage or less damage has been incurred. The same applies to returns. In this case, the supplier may charge 10% of the sales price for the restocking and repackaging of the returned items.

VI. Packaging and shipping

Packaging becomes the property of the customer. Shipping and packaging costs will be invoiced separately. The choice of shipping method is at our discretion.

VII. Default of acceptance, damage caused by delay and transfer of risk

1. If the customer does not accept the goods on time or is otherwise in default of acceptance, they shall owe the supplier an amount of 0.25% of the order value concerned for each working day or part thereof, but no more than 5% of the order value concerned in total. The customer reserves the right to prove that the damage was less or that there was no damage at all, and the supplier reserves the right to prove that the damage was greater.
2. The customer is obliged to accept the delivery item. If the customer is deliberately or grossly negligent in accepting the purchased item for longer than fourteen days after receipt of the notification of availability, the supplier is entitled, after setting a grace period of a further fourteen days, to withdraw from the contract and claim damages instead of performance. The setting of a grace period is not required if the customer seriously and definitively refuses acceptance or is obviously unable to pay the purchase price within this period or if other circumstances exist which, after weighing the interests of both parties, justify the immediate assertion of damages or withdrawal.

VIII. Prices, payments, price changes

1. The goods shall be delivered at the risk and expense of the customer.
2. All other costs incurred, in particular for the processing of payments, transport, import and export duties, and fees, shall be borne by the customer.
3. Unless otherwise agreed, payments are due immediately upon transfer of risk/performance of service, strictly net. Payments shall be made at the registered office of Optigrün in Krauchenwies. The costs and risk of payment shall be borne by the customer.
4. The deduction of discounts requires a separate agreement in each individual case.
5. The acceptance of cheques and bills of exchange requires the express written agreement.
6. Notwithstanding any provisions to the contrary, the supplier is entitled to offset payments made by the customer against the customer's older debts first. If costs and interest have been incurred, the supplier may offset the payment against the costs, then against the interest and finally against the principal claim.

7. Price changes are permissible if there are more than four months between the conclusion of the contract and the agreed delivery date. If wages, material costs or market purchase prices increase after this date until completion of the delivery, the supplier is entitled to increase the price appropriately in line with the cost increases. In this case, the customer is entitled to withdraw from the contract.

IX. Liability

1. The supplier shall be liable in accordance with the statutory provisions in the event of a culpable breach of duty for all damages resulting from injury to life, limb or health.
2. The supplier shall be liable in accordance with the statutory provisions in the event of a culpable breach of essential contractual obligations. However, liability shall be limited to the foreseeable damage typical for this type of contract if the supplier does not breach essential contractual obligations intentionally or through gross negligence. Essential contractual obligations are those that are absolutely necessary to achieve the purpose of the contract and on whose fulfilment the customer may rely.
3. The supplier shall be liable for grossly negligent and intentional breaches of non-essential contractual obligations.
4. The supplier shall be liable in accordance with the provisions of the applicable product liability law.
5. In the event of a contractual warranty agreement, the supplier shall be liable in accordance with the warranty statement.
6. Otherwise, liability is excluded. This also applies to indirect damage or consequential damage (e.g. loss of profit, loss of production, etc.).
7. Insofar as the customer's liability is limited or excluded on the basis of the preceding clauses, this shall also apply to the liability of its legal representatives and vicarious agents, including its employees and staff.

X. Support in product liability cases

1. The customer shall not modify products with regard to safety-related aspects. In particular, he shall not modify or remove existing warnings about dangers in the event of improper use. In the event of a breach of this obligation, the customer shall indemnify us internally against product liability claims by third parties, unless the customer is not responsible for the error giving rise to the liability.
2. If we are obliged to take measures, in particular to issue a product warning or recall a product, the customer shall support us to the best of its ability.
3. The customer shall inform us immediately in writing of any risks that become known to them.

XI. Industrial property rights and copyrights, Closed Substance Cycle Waste Management Act

1. The fulfilment of all take-back and recycling obligations under the Closed Substance Cycle Waste Management Act and the Packaging Ordinance shall be the sole responsibility of the customer.
2. Unless otherwise agreed, the supplier is obliged to deliver the goods free of third-party industrial property rights and copyrights in accordance with the law of the Federal Republic of Germany.

XII. Offsetting, right of retention

1. The customer may only offset claims that are undisputed or have been established by a final court ruling.
2. Clause 1 shall apply mutatis mutandis to the exercise of a right of retention.

XIII. Prohibition of assignment

1. The customer may only transfer rights and obligations arising from this agreement to third parties in whole or in part with our prior written consent.
2. Clause 1 shall not apply to the assignment of a claim for remuneration within the meaning of Section 354a of the German Commercial Code (HGB).

XIV. Retention of title

1. Goods delivered by the supplier remain the property of the supplier (reserved goods) until all claims arising from the business relationship have been paid in full. The customer is entitled to dispose of the reserved goods in the ordinary course of business. In the case of current accounts, the reserved property serves as security for the balance claim in favour of the supplier.
2. The customer is obliged to insure the reserved goods adequately against fire, water and theft at its own expense.
3. The processing or transformation of the goods subject to retention of title by the customer shall always be carried out on behalf of the supplier. If goods subject to retention of title are processed with other items not belonging to the supplier to form a new item, the supplier shall acquire co-ownership of the new item. The co-ownership share shall be calculated on the basis of the value of the goods subject to retention of title in relation to the value of the other processed or transformed items at the time of processing or transformation.
4. If the customer combines or mixes the goods subject to retention of title to form a single item and one of the other items is to be regarded as the main item, the supplier shall be entitled to proportional ownership of the resulting item. The co-ownership share shall be calculated on the basis of the value of the goods subject to retention of title in relation to the value of the other combined or mixed items at the time of combination or mixing. The customer hereby assigns this co-ownership to the supplier, granting co-ownership, and the supplier hereby accepts the assignment.
5. Any claims arising from the resale of the goods subject to retention of title or from their installation, processing, combination, mixing or any other use, including claims

for remuneration for work performed, claims under construction contracts and any other claims for remuneration against third parties, are hereby assigned by the Customer to the Supplier, together with all ancillary rights, in their entirety or in the amount corresponding to any co-ownership interest of the Supplier pursuant to Sections 3 and 4, as security for the Supplier, with effect from the present date. The supplier accepts this assignment. The customer undertakes to retain title to the goods vis-à-vis its customers until the purchase price has been paid in full. The customer is authorised to collect the resulting purchase price claims on behalf of the supplier until revocation or until payment to the supplier is suspended. The supplier shall only revoke the collection authorisation if the customer is in default of payment or if an application is made to open insolvency proceedings against the customer's assets. In the event of revocation of the collection authorisation, the customer shall provide the supplier with the information necessary for the collection of the claim, submitting the relevant supply contracts with its customers, the invoices and an overview of the payments made by the customers to the customer.

6. The customer shall immediately notify the supplier in writing of any access by third parties to goods owned by the supplier, in particular enforcement measures against the goods subject to retention of title and the supplier's claims, and shall provide the information and documents necessary for defence.
7. If the realisable value of the security interests to which the supplier is entitled exceeds all claims against the purchaser that have not yet been paid to the supplier by more than ten per cent, the purchaser shall be obliged to release the security interests at the customer's request. The supplier shall be entitled to select the security interests to be released.
8. If the goods are taken abroad, the parties undertake to reach an agreement which imposes the same rights and obligations on the parties with regard to its effectiveness.

XV. Place of performance, place of jurisdiction

1. The place of performance is Krauchenwies-Göggingen.
2. These General Terms and Conditions and all legal relationships between the supplier and the customer shall be governed by the law of the Federal Republic of Germany, excluding all international and supranational (contractual) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods. However, the prerequisites and effects of the retention of title pursuant to Section XIII are subject to the law of the respective location of the item, insofar as the choice of law in favour of German law is inadmissible or ineffective according to this law.
3. If the buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Krauchenwies-Göggingen or the courts responsible for the registered office. However, the customer is also entitled to bring an action at the buyer's general place of jurisdiction.

XVI. Data protection, miscellaneous

1. The supplier processes the customer's personal data on the basis of the statutory data protection provisions, in particular the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG). The customer can find more details in the data protection information sheet for customers.

2. Transfers of rights and obligations of the customer from the contract concluded with the supplier require the written consent of the supplier to be effective.
3. Should one or more provisions of these General Terms and Conditions or parts of a provision be invalid, this invalidity shall not affect the validity of the remaining provisions or the contract as a whole. In accordance with the case law of the Federal Court of Justice, according to which a severability clause merely leads to a reversal of the burden of proof, it is the express intention of the parties to maintain the validity of the remaining provisions of these General Terms and Conditions under all circumstances. Sentences 1 and 2 shall apply mutatis mutandis in the event of a loophole.

B. SPECIAL PROVISIONS FOR PURCHASE CONTRACTS

In addition to the provisions under A. General Provisions, the following provisions apply to purchase contracts, whereby the special provisions of this section take precedence in the event of conflicting provisions.

I. Transfer of risk

When the delivery item is shipped, the risk shall pass to the customer as soon as the supplier has delivered the item to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. Otherwise, the risk shall pass to the customer upon acceptance of the delivery item.

II. Notice of defects

1. The customer is obliged to inspect the goods received for defects within four working days of the transfer of risk and to notify us of any defects discovered.
2. If a defect becomes apparent that was not detectable during the inspection in accordance with clause 1, this must be reported within four working days of its actual discovery.
3. Any defects discovered must be reported to the supplier in writing at least. The complaint must be accompanied by a detailed description of the suspected causes and effects. Upon request, suitable documentation, in particular in the form of photographs, must be made available to the supplier.
4. If the customer fails to comply with its obligation to inspect and give notice of defects, the service shall be deemed to have been approved and the customer shall not be entitled to any warranty rights. This shall not apply if the supplier has fraudulently concealed a defect or if the exclusion would be incompatible with the provisions of a guarantee.
5. The customer shall be obliged to bear the supplier's costs associated with a culpably made unjustified complaint.

III. Claims for defects

1. Warranty claims are excluded if they are based on information provided by the customer, in particular dimensions, drawings or plans. Claims for infringement of third-party property rights are excluded if the infringement is attributable to the customer's instructions.

2. If the delivered item is defective, the supplier may first choose whether to provide subsequent performance by remedying the defect (repair) or by delivering a defect-free item (replacement delivery). The supplier's right to refuse the chosen type of subsequent performance under the statutory conditions remains unaffected.
3. Warranty claims based on defects - with the exception of claims for damages - shall become time-barred in deviation from Section 438 (1) No. 3 of the German Civil Code (BGB) within twelve months of the transfer of risk. This shall not apply in the case of fraudulently concealed defects or other mandatory statutory provisions.
4. If the notice of defects is unjustified, the supplier is entitled to demand reimbursement of the expenses incurred from the customer.
5. Irrespective of this, claims for defects shall not exist in the case of natural wear and tear or damage occurring after the transfer of risk as a result of incorrect or negligent handling, excessive strain, unsuitable care or special external influences not provided for in the contract. If the customer or third parties carry out improper modifications or repairs, no claims for defects shall exist for these and the resulting consequences.
6. Claims by the customer for expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded if the expenses increase because the delivery item has been taken to a location other than the place of delivery, unless the transfer corresponds to its contractual use.
7. The customer shall only have recourse claims against the supplier to the extent that the customer has not made any agreements with its customer that go beyond the statutory claims for defects.
8. For claims for damages, A. No. IX (Other claims for damages) shall apply.
9. The statutory provisions on recourse by the seller pursuant to Sections 445a, 445b of the German Civil Code (BGB) and, in the case of the sale of consumer goods, pursuant to Section 478 of the German Civil Code (BGB) remain unaffected.
10. Any further claims or claims other than those regulated above by the customer against the supplier and its vicarious agents due to a defect are excluded.

C. SPECIAL PROVISIONS FOR CONTRACTS FOR WORK

For contracts for work and services (e.g. spray-on greening), the following provisions shall apply in addition to the provisions under A. General Provisions, whereby the special provisions of this section shall take precedence in the event of conflicting provisions.

I. Remuneration, instalment payments

1. In the absence of an express agreement on remuneration, the supplier's hourly and billing rates applicable at the time of conclusion of the contract shall apply, which shall be provided immediately and free of charge upon request.
2. The supplier is entitled to demand reasonable instalment payments for services rendered in accordance with the contract, in accordance with the statutory provisions.

II. Provision of services by third parties

The supplier shall be entitled to have services owed under the contract performed in whole or in part by third parties.

II. Deadline for acceptance, deemed acceptance

1. The supplier shall notify the customer of the completion of the service provision (notification).
2. Unless otherwise agreed in individual cases, the customer is obliged to declare to the supplier within a period of three working days of receipt of the notification whether it accepts the service.
3. Regardless of receipt of a notification, the customer is obliged to declare to the supplier within a period of three working days from completion of the services whether it accepts the service.
4. Acceptance shall also be deemed to have taken place if the customer does not refuse acceptance after expiry of the period specified in clauses 2 and 3, stating at least one defect.

IV. Complaints about services rendered

1. The customer is obliged to report complaints about the services provided by the supplier at least in text form.
2. At the supplier's request, the customer shall provide a detailed description of the suspected causes and effects. Upon request, suitable documentation, in particular photographs, shall be made available to the supplier.

V. Costs of subsequent performance

1. The supplier shall bear the costs of subsequent performance in accordance with the statutory provisions.
2. The supplier shall not bear any additional costs incurred as a result of the goods being transported to a location other than the original place of use.

VI. Limitation period for warranty claims

1. Warranty claims based on defects - with the exception of claims for damages - shall become time-barred within twelve months of acceptance, in deviation from Section 634a (1) No. 1 of the German Civil Code (BGB).
2. This shall not apply in the case of fraudulently concealed defects or other mandatory statutory provisions.

VII. Contractual lien

1. The supplier shall be entitled to a contractual lien for claims arising from the performance of services on the movable items manufactured or repaired by him for the customer if they came into his possession during manufacture or for the purpose of repair.
2. The contractual lien may also be asserted for claims arising from services performed earlier, insofar as they are related to the subject matter of the order.