

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

## **I. Validity of the terms and conditions**

All deliveries, services and offers from Optigrün international AG (hereinafter: Supplier) take place exclusively based on these terms and conditions of business. These therefore also apply to all future business transactions, even if this is not explicitly agreed again. These terms and conditions are considered accepted at the latest on receipt of the goods or service. Conflicting confirmations by the Customer with reference to the Customer's terms and conditions of business or purchase are hereby rejected.

## **II. Offers and conclusion of contract**

1. The Supplier's offers are subject to change unless otherwise stated in the order confirmation. Statements of acceptance and all orders require the written or equivalent confirmation of the Supplier in order to be legally valid.
2. Drawings, diagrams, dimensions and weights are only binding if this is explicitly agreed in writing.
3. The Supplier reserves the property and copyrights to samples, quotations, drawings and similar information of a physical or non-physical nature – including in an electronic form; they may not be made accessible to third parties. The Supplier commits to only make any information and documents that are designated as confidential by the Customer available to third parties with the Customer's consent.

## **III. Deadlines for delivery, default**

1. Compliance with an agreed delivery period or an exact time specification is subject to correct and timely delivery to the Supplier. The Supplier reports as soon as possible on any delays that arise.
2. The delivery period is extended accordingly if non-compliance with the delivery period is due to force majeure, e.g. mobilisation, war, riot, or measures in the context of industrial disputes, e.g. strike or lockout, or the occurrence of other unforeseeable events beyond the Supplier's control.
3. The Supplier is not to be held responsible for the aforementioned circumstances described under 2., even if they occur during an existing delay.
4. Partial deliveries are permitted within the agreed delivery period, provided this does not result in any disadvantages for use.
5. The Supplier is only in default if performance is due and an express written reminder has been issued, unless a specific calendar date has been agreed for performance.
6. If the Supplier is in default, the Customer may demand compensation for each completed week of delay in the amount of 0.5%, but not more than 5% of the price for the part of the delivery that cannot be put to the intended use due to the default, provided that the Customer can prove that they have suffered damage as a result.
7. Compensation claims by the Customer that exceed the limits specified in No. 6 are excluded in all cases of delayed delivery, even after a grace period set by the Customer has expired. This does not apply if liability is mandatory in cases of wilful intent or gross negligence or due to personal injury, bodily harm or damage to health. In addition, the Supplier is liable in accordance with the statutory provisions if the delay in delivery for which they are responsible is due to the culpable breach of a material contractual obligation; in this case, however, liability for compensation is limited to foreseeable, typically occurring damage. A change to the burden of proof to the disadvantage of the Customer is not associated with the aforementioned regulations. The Customer's statutory right to withdraw from the contract remains unaffected.
8. The Customer may only withdraw from the contract within the framework of the statutory provisions if the Supplier is responsible for the delay. At the Supplier's request, the Customer is obliged to declare within a reasonable period of time whether they are withdrawing from the contract, requesting compensation instead of performance or adhering to the contract.

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## **IV. Scope of delivery**

1. The scope of delivery and the prices are determined by the Supplier's written order confirmation.
2. The Supplier reserves the right to make changes in design or form that are attributable to improvements in technology or to legal requirements during the delivery period, provided that the delivery item is not changed significantly 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 within the tolerance range of +/- 8% will not be recognised as such.

## **V. Cancellation costs**

If the Customer cancels a placed order without justification, the Supplier may, without prejudice to the possibility of claiming higher actual compensation, demand 10% of the sales price for the costs incurred in processing the order and for lost profit. The Customer reserves the right to provide evidence that no damage or less damage has occurred. The same applies to returned goods. In this case, the Supplier can demand 10% of the sales price for the re-storage 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 shipping method is selected at the Supplier's reasonable discretion.

## **VII. Acceptance and transfer of risk**

1. The Customer is obliged to accept the delivery item. If the Customer intentionally or through gross negligence remains in arrears with the acceptance of the purchased item for more than fourteen days from receipt of the notification of readiness, the Supplier is entitled, after setting a grace period of a further fourteen days, to withdraw from the contract and to request compensation instead of performance. It is not necessary to set a grace period if the Customer seriously and definitively refuses acceptance or is obviously unable to pay the purchase price even within this period or if other circumstances exist which, taking into account the interests of both parties, justify the immediate assertion of compensation or withdrawal from the contract.
2. If the delivery item is not dispatched within the scope of a consumer goods purchase, the risk is transferred to the Customer as soon as the Supplier has delivered the item to the forwarding agent, the carrier or the person or institution otherwise designated to carry out the dispatch. Otherwise, the risk is transferred to the Customer upon acceptance of the delivery item.

## **VIII. Price changes**

Price changes are permitted if there are more than four months between the conclusion of the contract and the agreed delivery date. If wages, material costs or market cost prices increase thereafter until completion of the delivery, the Supplier is entitled to increase the price appropriately in line with the cost increases. The Customer is only be entitled to withdraw from the contract if the price increase exceeds the increase in the general cost of living between the order and delivery to a more than insignificant extent.

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## IX. Claims for defects

The Supplier is liable for defects as follows:

1. All parts or services showing a defect within the limitation period – irrespective of service life – will, at the Supplier's discretion, be repaired, replaced or provided again free of charge, provided that the defect already existed at the time of the transfer of risk.
2. If the delivered item is defective, the Supplier may initially choose whether to provide subsequent fulfilment by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). The Supplier's right to refuse the chosen type of subsequent fulfilment under the statutory conditions remains unaffected.
3. Claims for defects become time-barred after twelve months. The period begins with the transfer of risk.  
If the law stipulates longer periods in accordance with sections 438(1)(2) (buildings), 475(2) (sale of consumer goods), 478, 479 (right of recourse) and section 634a (construction defects in buildings), section 437 (claims for damages arising from defects) of the German Civil Code (BGB), these apply.
4. In the event of contracts between entrepreneurs, the Customer must notify the Supplier of defects in writing without delay. In other contractual relationships, obvious defects must be reported within 2 weeks of delivery. Goods must be checked for transport damage immediately upon receipt. Any transport damage must be noted on the freight document.
5. In the event of notices of defects, payments by the Customer may be withheld to an extent that is in reasonable proportion to the defects that have occurred. If the notice of defects is unjustified, the Supplier is entitled to demand compensation from the Customer for the expenses incurred.
6. Claims for defects do not exist where there is only an insignificant deviation from the agreed quality and where there is only an insignificant reduction in usability, unless it is a purchase of consumer goods.
7. Irrespective of this, claims for defects do not exist in the event of natural wear and tear or damage arising after the transfer of risk due to improper or negligent handling, excessive use, unsuitable care or due to special external influences that are not assumed under the contract. If improper modifications or repairs are carried out by the Customer or third parties, there will also be no claims for defects for these or any resulting consequences.
8. Claims of the Customer for expenses incurred for the purpose of supplementary performance, in particular transport, travel, labour **and** material costs, are excluded if the expenses increase because the delivery item has been taken to a place other than the place of delivery, unless the transfer corresponds to its contractual use.
9. Recourse claims of the Customer against the Supplier exist only to the extent that the Customer has made no agreements with their buyer that go beyond the statutory claims for defects.
10. No. XIII (other claims for compensation) applies to claims for compensation.
11. Further claims or claims other than those regulated above on the part of the Customer against the Supplier and their vicarious agents due to a defect are excluded.

## X. Retention of title

1. The delivery items (goods subject to retention of title) remain the property of the Supplier until fulfilment of all claims to which the Supplier is entitled against the Customer from the business relationship, within the scope of the purchase of consumer goods until fulfilment of the claims to which the Supplier is entitled against the Customer from the specific transaction.
2. If the realisable value of all security interests to which the Supplier is entitled exceeds the amount of all secured claims by more than 10%, the Supplier will release a corresponding proportion of the security interests at the request of the Customer.

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3. For the duration of the retention of title, the Customer is prohibited from pledging or transferring ownership by way of security and resale is only permitted to resellers in the ordinary course of business and only on condition that the reseller receives payment from its customer or makes the reservation that ownership is not transferred to the customer until the customer has fulfilled its payment obligation.
4. Any treatment or processing is carried out by the Customer on behalf of the Supplier without any obligation arising for the Supplier. If the goods subject to retention of title are processed, combined or mixed with other goods not belonging to the Supplier, the Supplier is entitled to a co-ownership share of the new item in the ratio of the invoice value to the other processed goods at the time of processing, combining or mixing. If the Customer acquires sole ownership of the new item, the parties agree that the Customer grants the Supplier co-ownership of the new item in proportion to the invoice value of the processed, combined or mixed goods subject to retention of title and stores them for the Supplier free of charge.
5. The Customer must inform the Supplier immediately in the event of seizure, confiscation or other dispositions or interventions by third parties.
6. In the event of breaches of duty by the Customer, in particular default in payment, the Supplier is entitled to withdraw from the contract and take back the goods, and the Customer is obliged to surrender them. Taking back the goods or asserting the retention of title does not require the Customer to withdraw from the contract. These actions or the seizure of the goods subject to retention of title by the Supplier do not constitute a withdrawal from the contract, unless the Supplier has expressly declared this.
7. If the Customer resells the goods subject to retention of title, they hereby assign to the Supplier all claims in the amount of the purchase price agreed between the Supplier and the Customer (including VAT) which accrue to the Customer from the resale, irrespective of whether the delivery items are resold without or after processing. The Customer is authorised to collect these claims even after their assignment. The authorisation of the Supplier to collect the claims themselves remains unaffected by this, but the Supplier undertakes not to collect the claims as long as the Customer duly fulfils their payment obligations and is not in default of payment. If this is the case, however, the Supplier may demand that the Customer discloses the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

### **XI. Impossibility, amendment of contract**

1. If delivery is impossible, the Customer is entitled to claim compensation, unless the Supplier is not responsible for the impossibility. However, the Customer's compensation claim is limited to 10% of the value of the part of the delivery that cannot be put to the intended use due to the impossibility. This limitation does not apply in cases of liability for wilful intent, gross negligence or personal injury. A change to the burden of proof to the disadvantage of the Customer is not associated with this regulation. The Customer's right to withdraw from the contract remains unaffected, even if an extension of the delivery period was initially agreed with the Customer. In the event of only temporary impossibility, No. III (Deadlines for delivery, default) applies.
2. If unforeseeable events within the meaning of No. III(2) significantly change the economic significance or the content of the delivery or have a significant impact on the Supplier's operations, the contract will be adapted appropriately in good faith. If this is not economically justifiable, the Supplier has the right to withdraw from the contract. If they wish to exercise this right, they must inform the Customer immediately after becoming aware of the consequences of the event.

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## **XII. Industrial property rights and copyrights, German Circular Economy Act**

1. The fulfilment of all take-back and recycling obligations under the German Circular Economy Act and the German Packaging Ordinance is the sole responsibility of the Customer.
2. Unless otherwise agreed, the Supplier is only obliged to provide the delivery free of industrial property rights and copyrights of third parties (hereinafter: Property Rights) in the country of the place of delivery. If a third party raises justified claims against the Customer due to the infringement of Property Rights by deliveries made by the Supplier and used in accordance with the contract, the Supplier is liable within the period specified in No. IX(2) as follows:
  - a. The Supplier will, at their own discretion and at their own expense, either obtain a right of use for the service in question, modify it in such a way that the Property Right is not infringed or replace it. If this is not possible for the Supplier under reasonable conditions, the Customer is entitled to the statutory rights of cancellation or reduction.
  - b. The Supplier's aforementioned obligations only apply between entrepreneurs if the Customer informs the Supplier immediately in writing of the claims asserted by the third party, does not acknowledge an infringement and leaves all defence measures and settlement negotiations to the Supplier.
  - c. If the Customer ceases to use the delivery in order to minimise damage or for other important reasons, they are obliged to point out to the third party that the cessation of use does not constitute an acknowledgement of the infringement of Property Rights.
  - d. Claims of the Customer are excluded if they themselves are responsible for the infringement of Property Rights. Claims of the Customer are also excluded if the infringement of Property Rights is caused by special stipulations by the Customer, by a modification not foreseeable by the Supplier or by the fact that the delivery is modified by the Customer or used together with products not supplied by the Supplier.
  - e. Otherwise, No. IX - Warranty applies accordingly.

## **XIII. Other compensation claims**

1. Compensation claims by the Customer, irrespective of the legal grounds, in particular for breach of duties arising from the contractual obligation and from unauthorised actions, are excluded.
2. This does not apply if liability is mandatory, e.g. under the German Product Liability Act, in cases of wilful intent or gross negligence or at least negligent personal injury, bodily harm or damage to health or a breach of material contractual obligations.
3. However, compensation for the breach of essential contractual obligations is limited to the foreseeable damage typical for the contract, unless there is wilful intent or gross negligence or liability for personal injury or due to the assumption of a guarantee for the existence of properties.
4. A change to the burden of proof to the disadvantage of the Customer is not associated with the aforementioned regulations.

## **XIV. Terms of payment**

1. The purchase price and the fees for ancillary services are due for payment upon handover of the delivery item.
2. Cheques and bills of exchange are only considered as payment after they have been cashed. The acceptance of bills of exchange always requires a prior written agreement. If bills of exchange are accepted, the bank discount and collection charges will be charged. They are to be paid immediately in cash.
3. The Customer is only be entitled to off-setting rights if their counterclaims have been legally established, are undisputed or have been recognised by the Supplier.

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4. The Customer also has no right of retention due to disputed counterclaims, unless the Customer is a consumer.
5. Incoming payments can be booked to the oldest outstanding receivables at the Supplier's discretion.

### **XV. Place of fulfilment, place of jurisdiction**

1. The place of fulfilment is Krauchenwies-Göggingen.
2. These Terms and Conditions of Sale and Delivery and all legal relationships between the Supplier and the Customer are governed by the laws of the Federal Republic of Germany to the exclusion of all international and supranational (contractual) legal systems, in particular the UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. However, the conditions and effects of the retention of title pursuant to section X. are subject to the law of the respective location of the item, insofar as the choice of law made in favour of German law is inadmissible or ineffective.
3. If the Customer is a tradesman as defined by the German Commercial Code (Handelsgesetzbuch), a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Krauchenwies-Göggingen or the courts that have jurisdiction for the registered office. However, we are also entitled to file a suit at the Customer's general place of jurisdiction.

### **XVI. Miscellaneous**

1. Transfers of the Customer's rights and obligations arising from the contract concluded with the Supplier require the written consent of the Supplier in order to be effective.
2. Should a provision be or become invalid, this will not affect the validity of the other provisions.