

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

of

YBBSTALER FRUIT AUSTRIA GmbH

I.

Exclusions

Unless otherwise agreed, our deliveries shall be made solely on the following terms and conditions, even where these have not been explicitly mentioned in verbal negotiations, regardless of whether such negotiations have been conducted face-to-face or by telephone. Any purchasing conditions of the Buyer's which are at variance with these Terms and Conditions of Sale and Delivery are hereby contradicted and shall not become part of the contract. Any exclusion of these Terms and Conditions of Sale and Delivery, or any amendment and/or addition thereto, shall only be effective if we have expressly indicated our consent in writing.

II.

Conclusion of contract

(1) A contract shall be deemed to have been concluded when the Buyer's order has been confirmed in writing by ourselves; oral agreements shall not be valid. The contract languages shall be German and English only; contracts in any other language shall not be valid.

(2) Prior offers, tenders etc. which are drawn up and communicated by ourselves shall be without obligation, except where they are expressly indicated in writing as being binding for a particular period of time.

III.

Prices

(1) The prices are to be read as net prices without any deduction, franco carrier (FCA) Ybbstaler/Kröllendorf plant, except where other conditions may have been agreed in writing.

(2) The purchase price claim is to be paid by a non-cash money transfer to us within the contractually agreed payment period. Where payment periods are exceeded, it is agreed that statutory interest and monition fees, bill charges and collection expenses shall be borne by the Buyer.

(3) Payments received from the Buyer shall, at our discretion, either be credited to the longest-due claim(s) or credited to claims in respect of deliveries of goods which have already been processed or re-sold. The Buyer is obliged to inform us, within 48 hours of our written request for such information, whether a particular consignment of goods supplied by ourselves has already been processed or re-sold.

(4) Shipping and other packaging materials will not be taken back by ourselves, and the Buyer is obliged to ensure proper and correct disposal of such materials. This provision does not apply to multi-trip tanks and Euro-pallets (multi-trip receptacles). The multi-trip receptacles remain our property and may not be re-sold by the Buyer; they are merely loaned to the Buyer by ourselves. They must be reported as ready for dispatch within a maximum of 30 days of the date of the delivery, and held in readiness for collection. After the expiry of this period, we shall be entitled - at our discretion - either to invoice the Buyer for the replacement value of the receptacles or to charge reasonable compensation for the period during which the receptacles were not available for our use. If the receptacles have been damaged, we shall be entitled to charge for the diminution in value caused by such damage. If the receptacles have been used for any purpose other than that for which they are intended, we shall make a charge to cover the costs of cleaning and repair.

IV.

Offsetting and withholding

It is not permitted to offset any amount against, or withhold any amount from, any claim of ours.

V.

Delivery

(1) Unless otherwise agreed in the order confirmation, delivery shall be franco carrier (FCA) Ybbstaler/Kröllendorf plant. All shipping costs shall be borne by the Buyer.

(2) Not only in the above case [per V.(1)], but also where other delivery terms are agreed than in V.(1) above and where the goods are dispatched using a customary mode of shipping (rail, post, forwarding agent, carrier etc.), the price risk shall pass to the Buyer when the goods are handed over to the carrier, and in any event no later than when the goods leave the plant or the warehouse. The Buyer shall consent to any customary mode of shipping.

(3) The delivery time in each case shall be agreed in a separate contract. Delivery times will be adhered to by ourselves. If, for whatever reason, it should not be possible to deliver by the specified time, we shall notify the Buyer a reasonable time before the delivery date. This delay shall not constitute sufficient grounds for cancellation of the contract, and the Buyer shall refrain from seeking recovery by suit.

(4) In the case of multiple delivery contracts or global contracts, the Buyer must give advance notice of the probable delivery scheme at least 21 (twenty-one) days prior to the commencement of the agreed delivery period. The Buyer must then give notice of the exact date and time of collection 7 (seven) days in advance. If the Buyer fails to give such advance notice, then we shall specify the delivery dates ourselves and notify the Buyer of these dates.

(5) If the Buyer fails to collect the goods by the agreed time, the risk shall pass to the Buyer at the end of the day agreed for collection. We shall store the goods at the Buyer's expense and risk, and shall charge the Buyer a reasonable amount by way of compensation for storing the goods. Our liability in this respect shall be limited to that for gross negligence only, and we shall accept no responsibility for any changes which may occur in the goods as a result of handling and storage. The same shall apply in any and every case of delayed acceptance, where the Buyer shall indemnify us for all costs, expenses and damage resulting from the delayed acceptance or the failure to take delivery.

(6) In cases where our contractual obligations are performed in agreed instalments, the fact that one such delivery instalment may be delayed shall not entitle the Buyer to cancel the contract with respect to the remaining instalments, which shall thus be transacted as originally agreed in the multiple delivery contract.

(7) Specimens or samples which may be sent to the Buyer are merely intended to give the Buyer an approximate idea of the product. Particular properties of the specimen or sample shall only be deemed to be assured in specific cases where this has been expressly agreed.

(8) Qualitative deviations from the order shall be accepted by the Buyer, within the customary tolerance limits, if they are attributable to crop-related fluctuations or to the nature of the goods supplied, or if they are within the test-result replicability range. The agreed Brix content of the goods is merely a guideline value which may be exceeded or undershot by up to 0.5 degrees Brix without thereby giving grounds for claims by the Buyer. The deliveries are made in compliance with the provisions of Austrian foodstuffs legislation. As the goods supplied are - by their very nature - unique, it cannot be guaranteed that they can be replaced by goods with identical characteristics.

(9) In quantitative terms (i.e. as regards weight), deliveries are deemed to be fulfilled if the net shipping weight, as measured at the time of dispatch from our plant on an officially calibrated weighing machine, corresponds to the agreed delivery quantity.

These data will be documented by the weighing certificate on request. No other measurements will be accepted.

(10) We sell our goods subject to the proviso that we have ourselves received correct and timely deliveries. The Buyer may not demand the assignment of any rights arising from the purchasing contracts signed with our own suppliers.

(11) The Buyer is obliged to store the goods delivered by ourselves in a suitable and proper manner. Where so requested, the Buyer shall provide us with proof, within 48 hours, that the goods are being stored properly. If such proof is not provided on request, then any change in the goods which may be a result of incorrect or improper storage shall be irrefutably presumed to be a result of the Buyer's not having stored the goods correctly.

VI.

Retention of title

(1) The goods shall remain our property until payment has been received in full.

(2) In cases where the goods to which we retain title have been processed, mixed or combined with materials owned by the customer, it is agreed that this shall not cause our title to lapse, but shall result in co-ownership in proportion to the respective contributions made to the item thereby created. The Buyer even now assigns us its resulting co-ownership share as security for our remaining purchase-price claim, and grants us full preferential rights, meaning that we are permitted to privately sell the item as a whole. The Buyer shall take appropriate steps to ensure the efficacy of these security precautions and shall notify the third party of these precautions where this is necessary for legally valid conclusion of an agreement. The Buyer shall hold the new stock or the new item for us in trust, free of charge.

(3) Goods that were supplied to the Buyer subject to retention of title may be re-sold by the Buyer. The Buyer itself is obliged to retain title when delivering to its own customers, and even now assigns to us all receivables which may accrue to it from

any re-sale of the item to a third party, regardless of whether the goods subject to retention of title are sold to one or more buyers and of whether or not they have been processed, mixed or combined with other materials. The Buyer shall notify the third party hereof, as well as taking the necessary steps to ensure the efficacy of these security precautions; moreover, the Buyer shall be obliged to identify the buyers of the goods subject to retention of title, in writing, when so requested.

(4) If the legal system in whose jurisdictional territory the goods are located, and which is being applied, does not admit any retention of title, and this legal system still permits the retention of other rights in the claimed goods (especially the right to assign claims), then we shall be entitled to exercise these rights, at our option and without any limitation. The Buyer shall see to it that these security precautions are agreed in an effective manner.

(5) The Buyer is not entitled to make any other dispositions regarding the goods subject to retention of title, in particular trust receipt transactions or pledging.

(6) The Buyer is obliged to store the goods owned by ourselves in a correct and proper manner, to treat them carefully and to stock them separately from its own goods and from those of other owners; in particular, it is obliged to insure these at its own expense against fire, water and theft, at replacement value, and the respective insurance policies are to be vinculated (placed under transfer restrictions) in our favour.

VII.

Warranty, liability

(1) With ex-works deliveries, the critical point in time for determining the contract-compliant status of the goods is the time at which the goods are handed over, as agreed, to the carrier. In the case of deliveries for which we organise the shipping ourselves, the critical point in time for determining the contract-compliant status of the goods is the time at which the goods arrive at the Buyer's, or at the commercial

agent's, distributor's or other third party taking delivery of the goods, whichever of these events is the sooner.

(2) The Buyer is obliged to perform, or arrange for the performance of, proper inspection of the delivered goods immediately after the point in time defined in VII.(1) above, and to submit a written complaint about all defects immediately after such inspection, but no later than **five working days** after receipt of the goods. The Buyer must describe the defects. Defects that cannot be detected in the course of immediate inspection must be notified as soon as they are discovered, but no later than **25 days** after receipt of the goods. If a defect should become apparent, the Buyer shall refrain from processing or converting the goods, and shall ensure that no alteration whatever takes place in the goods. The Buyer must store and handle these goods properly and correctly. If no complaint is made regarding defects (including concealed defects) prior to the commencement of processing or converting, the goods shall be deemed to have been approved.

(3) Where defects are not notified until after the end of the 25-day deadline from the time of receipt, or where the goods started to be processed or converted before the complaint was raised, any and all liability, on whatever legal ground, shall be excluded.

(4) The Buyer grants us the right to exchange defective goods for goods which are defect-free. The Buyer has no right to any immediate price reduction, or to cancel the sale. Where we remedy a defect by exchanging the defective goods, we shall bear the costs and expenses only up to the amount of the net sales price. Any costs over and above this amount shall be borne by the Buyer. Attention is drawn to the provision in VIII (3) below.

(5) Where a contract is fulfilled in instalments (multiple delivery contract), the Parties expressly agree that any defects in one or more delivery instalments shall only entitle the Buyer to assert warranty claims with respect to the defective delivery instalments. The remaining instalments shall not be affected and shall be transacted as provided by the multiple delivery contract.

(6) A claim resting upon warranty claims of the Buyer's must be asserted within six months of the date of delivery, at the competent court of justice. Moreover, in cases where we bring a legal action in pursuit of any claim of ours, the fact that there may be counter-claims resting upon warranty claims shall only be admissible as a defence against our claim(s) if this defence is raised within this six-month period following the date of delivery.

VIII.

Damages

(1) We shall only be obliged to pay damages where gross negligence is attributable to us. The degree of negligence is to be proven by the claimant.

(2) The Buyer shall forego any compensation for damages in excess of the immediate damage; no damages shall be payable for loss of profit or consequential damage.

(3) The limitation period for the assertion of damages claims shall be 6 (six) months from the time of the passage of risk. Claims resting upon alleged damages claims shall only be admissible as a defence against any attempt by ourselves to secure judicial enforcement of any claim of ours if they are raised within this same period of time.

IX.

Force majeure

Instances of force majeure, including war, strikes, lock-outs, boycotts, shutdowns or stoppages at our plant(s) or at any of our suppliers, actions of the authorities or other official measures, blockades, fire, ice, flooding or other unforeseen circumstances which are a major impediment to delivery or which make it impossible for us to deliver (regardless of whether such circumstances have affected ourselves or one of our suppliers) shall entitle us either to defer deliveries for the duration of the impediment

and for a reasonable resumption period, or to cancel the contract altogether with regard to that part of the contract that has not yet been fulfilled. The Buyer may request us to declare whether we intend to cancel the contract or to deliver within a reasonable period of time. If we do not declare our intentions, the Buyer shall be entitled to cancel the contract.

X.

Place of performance

The agreed place of performance shall be Kröllendorf, Austria, unless specified otherwise in individual contracts.

XI.

Governing law, arbitral jurisdiction

(1) It is agreed that the legal relations between ourselves and the Buyer shall be governed exclusively by material Austrian law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods and conflict-of-laws rules.

(2) Any disputes arising from this contract or bearing upon any breach, dissolution or invalidity of the contract, or which come about in connection with the contract, shall - at our option - either be definitively adjudicated by the competent court having jurisdiction in rem in St. Pölten, Austria, or by an arbitration tribunal of three arbitrators according to Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules). The venue of the arbitral proceedings shall be Linz.

XII.

Partial invalidity

If any clause of this contract should be, or become, invalid, or if the contract should be incomplete, the remainder of the contract shall not be affected thereby. The invalid provision shall either be replaced by the appropriate standard discretionary legal provision, or - in the absence of any such standard provision - it shall be supplemented by the commercial practice and upright trade usage obtaining at our principal place of business. Any loopholes in the contract are to be closed in like manner.