



General Terms and Conditions Contract of the Obst-Trautner GmbH

stand april 2010

1. General terms, field of application, authorization for service and complementing contract terms.

1.1. All of our deliveries are based on this General Terms and Conditions Contract, so for the present as for the future, except of an other agreement in written form.

1.2. We reject any application of the General Terms and Conditions Contract of the business partner, if it's content contradicts to the content of ours. A silence to your own terms, the fulfilling of the delivery or the acceptance the consideration doesn't means the implicit acceptance of your General Terms and Conditions Contract. A contract agreement or any other accord get only valid, if we affirm them in written form. A modification of the terms gains validity only for one case, and doesn't modify the application of the other parts of our General Terms and Conditions Contract.

1.3. In secondary application we apply for this General Terms and Conditions Contract the term of the COFREUROP for fresh, enjoyable horticultural products in national and international trade in the valid form, last modified: October 1999 (except of arbitration).

The content of COFREUROP can be controlled in English language in the Internet (<http://www.dfhv.de/~upload/dfhv/pdf/cofreuropenglisch1999.pdf>)

1.4. With the first business contact our partner accepts the content and terms of our General Terms and Conditions Contract and the terms of COFREUROP – except of the arbitration.

1.5. Our business partner has the obligation to submit his business licence or trade concession, an actual copy of his Commercial Registry Entry and the living address and the ID of the business managers. He / She is obliged to announce any changes of these information in two weeks. If there's any change in the living address of the business partner without being announced, our postal deliveries are accessed with the service at the last, announced address, not even if the delivery couldn't be handed (fictional service). If our business partner is a one-man-business or a non-incorporated firm, the insurance of our partner must be authorized to announce any changes of the business or living address.

1.6. Every acts for filing insolvency of the fortune of our partner, or if our partner is a private limited partnership, the insolvency of one partner with unlimited liability must be announced without delay, within one day per fax, e-mail or phone call.



2. The Offer

All offers are without obligation. A prior sale is possible, if our offer in written form doesn't content any definitive offer. Private customers won't be served.

3. Prices and Paying Terms

All the prices of the seller are net prices, payable at the delivery of the goods, without any deduction. The legal purchase tax isn't contented in our prices, it will be added and showed accessorily. The delivery for other member states of the European Union are disburdened form the purchase tax, if the customer adds his purchase tax identification number. In other case the legal purchase tax rate of Germany will be added. The raising of the costs, cargo or taxes after the application of the contract burdens the customer. Cheques and drafts are only accepted as paying after their encashment. The acceptance of drifts, as payment depends on special agreements in written form. Drifts and other similar considerations will be accepted only on account on performance. At defaults of payment the customer should pay 1 % interest for a month, counted from the billing. If our damage is evidenced higher, we are authorized to claim it on an other way. The costs of the incasso burden also the customer. The customer commit automatically, without a warning a default, if he/she doesn't initiate any payment within 30 days after maturity date of our claim (§ 286 III Civil Code of Germany). If an incasso bureau should be mandated because of the delay of the customer, these costs burden also the customer except of the honorary for success. For all contracts is the liquidity of the customer as a considerably attribute preconditioned. If the customer is not able to fulfil his obligation of payment on time, the seller can claim for an adequate and value-keeping bail. The seller notes for payments in cash over 5.000,00 EUR the name, date of birth, place of birth, the citizenship, the living address and the number and the proper authority of the ID, as it's recommended in the act of money laundering. Customers from the European Union have to pay the purchase tax in their homeland (§ 15b of the German act for purchase tax).

4. Place of Performance, Jurisdiction and applied law

Our business location in Gräfenberg is the permanent place of fulfilment. This is decisive at all deliveries from other warehouses or magazines also.

The court for jurisdiction for all legal argues is the court for our business location in Gräfenberg. The process regulation of the state courts should be applied. The same should be applied for claims out of documents and drafts and for measures of indemnification. Fort he last case we are authorised to sue the court at the location of our contractual partner.



The German law will be applied for all argues and claims.

5. Terms of Delivery and Rescission

All deliveries succeed on a free way. If there's no other agreement, the customer is obliged to accept the delivered goods without any delay. The costs emerging through the default or the insufficient ability of unloading at the customer, burden the partner. The contractor can dispose of the purchased goods, if they won't be accepted immediately or after a appropriate time-limit. The customer has to take the responsibility for the costs of the less-price, the delivery, service and for the eventual back-delivery.

Vis major, theft, hindrances in the cargo, lack on employees, fire, strike and state-bans, which are able to avert the delivery, disburden us of the delivery obligation and authorize us to delay the delivery.

If the subject of the contract is goods, we don't own in our magazines at the time, we are free of any obligation of the delivery, if our distributor doesn't provide us with the goods on time.

Delivery in sales packaging is only subject of the contract, if our machines function blameless and correct.

We are not responsible for the adherence of any foreign food-law accords.

We are authorized to rescission from the contract, if our business partner files insolvency himself, or if a creditor files insolvency for him. In this case we are authorized to repossess all the delivered goods. For the repossession we gain the agreement of the business partner by signing this contract. The repossession can be carried out without the intervention of the partner also.

6. Notice of Defects

Exact notices of defects, except of fresh fruits, vegetables and tropical fruits shall be announced within 12 hours after receipt of the goods in written form. For fresh fruits, vegetables and tropical fruits the directions of COFREUROP shall be applied (6 hours for Class I, 8 hours for Class II). The same shall be applied for less-amounts and brakes. Defects emerged during the cargo, shall be announced for the road carrier. We can claim the certification of the legitimacy of the notice by an official attest or an expert.

If the goods were purchased on inspection, all notices of defects are invalid.



Irrelevant defects of the quality or amount don't give the right for the customer to disapprove the delivery or to announce rescission or to claim for compensation, but only for an appropriate decrease of the price. Other claims are invalid. Decisive is the entering weight certificated by the official weight ticket.

7. Marking of the Goods

The customer shall control the packaging and marking incl. EAN-Codes on its completeness and integrity without any delay after succeeded delivery. First and foremost the seller packaging shall be controlled, even so if on belief of the customer the selling took place on store price.

After a legitimate complaint the customer can only claim for a remarking, the seller has no further responsibility.

8. Reservation of Proprietary Rights

The goods remain till the fulfilment of all present and future claims our property. Till this moment a bailment and a cession by security of the goods are invalid.

The customer possesses the goods until the complete payment only as a direct possessor. With signing of this contract our indirect possession till complete payment will be accepted.

A re-sale is only permitted for reservation of proprietary rights out of open account in usual business development.

The customer assigns all present and future claims for re-sales for the seller with signing of this contract.

The customer shall announce this assignment on our demand for third parties, and he shall provide us with all to information for assertion of our claims. He shall inform the acceptors about our reservation of propriety rights if he sells the goods on credit. It is forbidden to apply a prohibition of assignments with further customers or to sell the claims for a factor.

If the goods would be bailed or call upon by third party, the customer shall inform us immediately in written form, so we can claim for our rights from § 771 ZPO (German Legal Procedure for Civil Cases). If the third party can not come up for the costs of the juridical procedure from § 771 ZPO, the re-seller is personally liable for all our costs and fees.

We can cancel the right for re-sale, if the customer suspends his payments, if he filed insolvency, or if the customer has to make an affidavit about his financial situation.



We reserve the right for selection in the insolvency procedure.

If the goods should be manufactured, the customer assigns his propriety right for the seller with signing of this contract after §§ 946 BGB.

All claims from the re-selling of the new objects shall be assigned for the seller. The assignment is only valid for the value of the sum, which correlates the value of the provided, delivered and packaged goods with reservation of proprietary rights with an extra charge of 10 %. The customer assigns for the seller the first-order part of the claim.

If our goods would be disposed without agreeing a piece price, the customer assigns a part of his claims correlating the value of our wares with an extra charge of 10 %. The customer can collect the assigned claims on his own till our disclaimer.

We are obliged to decontrol all securities on demand of the customer, if the realisable value of our securities exceeds the value of our claims of 10 %. The choice of the decontrolled securities is discretionary.

9. Final Clauses

The inoperativeness of one or several provisions of said General Conditions does not affect the validity of the remaining provisions. In such case a provision is applicable which meets best the legal and economic aim of the inoperative provision. This does not apply in case complying with the terms of the Contract would constitute unreasonable hardship for one or both of the Parties.

The customer accepts, that we are obliged (as the contractual partners of the Schufa Holding AG, D-65203 Wiesbaden) to refer about the signing and rescission of a contract with natural persons, about a concession of a distributor credit, about default of our customers, and about all judicial moves on our own discretion. Schufa saves and schedules all these information and ensures the data security protection with all partners of the EU, arranges the information on third party on good interest, counts values of likelihood for debt risk (scoring), and provides us with the information for connecting our debtors.

All of our claims are insured for bad debt. The customer accepts, that we will refer about all bad business experiences for the insurance.

Gräfenberg (D) 2010