

Terms and conditions

Dominik Pflanzenvertriebsgesellschaft mbH

This is a translation of the official German Terms and Conditions. All contracts are based on the German Terms and Conditions. If there is any disagreement between the English and the German version, the German Terms and Conditions are valid.

1. Terms and conditions apply to entrepreneurs and consumers

- 1.1. These terms and conditions apply in our business operations with all our customers, as far as they are classified as entrepreneurs according to § 14 BGB.
- 1.2. These terms and conditions are valid if our customers are classified as consumers according to § 13 BGB, but with the restrictions specified in § 17 and the restrictions embedded in specific single sections of the law. According to § 13 BGB, every natural person is considered a consumer who concludes a legal transaction for any other reason than his or her commercial actions.

2. Inclusion of Terms and Conditions

- 2.1. Every delivery and service (including future ones) takes place solely under inclusion of these terms and conditions, subject to cipher 4., unless they were altered or removed in a single instance or due to a framework agreement with a customer.
- 2.2. Opposing or diverting conditions of our customers are not binding for us, unless we have agreed to them in a single instance or in a framework agreement with a customer.

3. Conclusion of Contract

- 3.1. Due to the limited production capacity of our suppliers are our first offers (e.g. in catalogues, advertisements or in response to requests) not requests as defined in § 145 BGB, but subject to change and not binding. They are to be understood as an invitation for the submission of requests by the customer.
- 3.2. A request made by a customer is considered binding for the customer 2 weeks after it has been received by us, unless otherwise specified by the customer when submitting the request.
- 3.3. A contract is constituted either by our written confirmation or by us fulfilling the service or delivery without previous written confirmation.
- 3.4. If our confirmation of the contract takes place after the 2-week commitment period (see 3.2.) – either written or through execution – the contract is considered valid, unless the customer rejects it immediately.

- 3.5. We have the right in our order confirmation or, respectively, upon delivery without a previous order confirmation, to adjust types, volume and delivery dates to our actual delivery capacities. These adjustments are considered approved by the customer if the customer does not reject them in the period of 1 week after receiving the order confirmation or the delivery without order confirmation. This only applies if the adjustments can be considered as being reasonable when taking our customers interest into account and if we have pointed out the consequences of his silence to the customer.

4. Applicability of Terms and Conditions

If a contract is established electronically through use of our internet services, the terms and conditions apply which can be found on our website. As far as the online available terms and conditions differ from our regular terms and conditions, only the online available terms and conditions apply. The German terms and Conditions that can be found on our website are valid as the last instance; in case of any disagreement between this translation and the German terms and conditions the German ones are binding.

5. Delivery/Delivery Date/Delivery Restrictions

- 5.1. Agreed upon delivery dates refer to the dates on which our goods will be ready to be shipped by others or shipped by our company.
- 5.2. Our duty to delivery rests as long as our suppliers have not delivered the correct goods on time. This only applies if the delay in delivery can be considered reasonable by us or our supplier. Furthermore this only applies concerning our consumers, if and as far as we have established a congruent cover transaction and if our partner has held up his part of the bargain.
- 5.3. Resource or energy deficits, strikes, lockouts, traffic disruptions, governmental decrees or other official restrictions, operational malfunctions, all cases of force majeure and every other circumstance that cannot be accounted for by either us or our agents and that could not have been foreseen by us, free us for the period of their existence from our duty to deliver, as far as these circumstance impact our delivery capacity.
- 5.4. In the cases of cipher 5.2 and 5.3 we are allowed to withdraw from a contract without the obligation to pay damages, subject to cipher 14, if we are not able to fulfil the services, if they are considered unreasonable due to the impediments or if an end to the obstacles to our services is not in sight. This only applies if we or our agent are not the source for the impediments and if we have informed our customers immediately about the impediments named above. In case of withdrawal from the contract, we are obligated to reimburse provided considerations by our customers.

6. Delivery, Duty to Examine, Requirement to give Notice

- 6.1 We are allowed to deliver in partial delivery, if not agreed on otherwise. The customer is only allowed to refuse the acceptance of partial delivery if they do not pose an objective interest for him. The refusal of acceptance is to be declared written and the missing objective interest is to be justified at the time of the refusal of acceptance in the written document.
- 6.2 The client has to examine the goods immediately, depending on the size of the delivery possibly through a sufficient number of samples. If the goods are delivered to a third party according to the wishes of the customer, for instance the client of the customer, the customer has to ensure an immediate examination.
- 6.3 Possible obvious defects, shortfalls or wrong deliveries are to be reported immediately to us by the customer. The delivery personnel is not authorised to accept these reports. If the customer does not give notice immediately, then no rights can be based on obvious defects.
- 6.4 The requirement to give notice as detailed above does not apply if the customer is the end consumer.

7. Delivery modalities

- 7.1. All prices are to be understood as from our facilities without shipping cost, unless other agreements exist. Shipping only takes place because of the customer's wishes and therefore all shipping costs are at the expense of the customer and may be charged accordingly by us.
- 7.2. The danger of the goods getting lost during shipment is carried by the customer as soon as the goods are given to the transporter. This applies, even if we pay for the delivery, deviant of cipher 7.1. This does not apply if the customer is the consumer.
- 7.3. Packaging can be returned to us in accordance with government regulations, as far as the customer sends them sorted to our facility in Hörstel at his own expense.
- 7.4. The customer will be charged for EUR-pallets, cc-containers and similar packaging for transportation. We will give a credit to the customer if he returns them to us undamaged. When calculating the price, we will use the regular one and it will be determined according to reasonable judgement.
- 7.5. Pallet trucks and racks on which our goods are delivered are and stay our property. If they remain at our customer due to his own wishes, he has to return them within a month on his own expense. If he fails to do so he will owe a usage fee totalling in the usual amount at the end of the one-month-period. The fee will be determined according to reasonable judgement.

- 7.6. If the customer collects the goods at one of our facilities or lets it be collected through an agent, the loading takes place through the customer. If we support the customer or his agent in the loading, this is to be seen as a courtesy. Only the customer or his agent is responsible for the load to be secured properly according to the government regulations.

8. Prices and Discounts

- 8.1. Unless there a different agreement is in place, the prices are valid which can be found on the pricelist that is applicable at the point of the binding order.
- 8.2. All prices are to be understood as from our facilities, and without freight tax and turnover tax, unless there is another agreement in place.
- 8.3. Discounts need an explicit previous agreement to be valid.
- 8.4. Discounts do not come about because of discounts that have been given to the customer in the past. Discounts are to be negotiated for each contract anew. This does not apply if discounts are established in a framework agreement between the company and a customer.
- 8.5. Discounts do not come to be because of us not rejecting a not agreed upon deduction of the price by the customer.

9. Billing

- 9.1. As far as partial delivery takes place as detailed in cipher 6.1.or in agreement with the customer, we are entitled to bill each partial delivery on its own. The billing is based on the individual prices. If this is not possible, for instance because of agreed upon package price, the billing of the partial delivery will be determined according to reasonable judgement.
- 9.3. Our bills are due immediately at our main facility.

10. Turnover Tax

If a change in in the turnover tax takes place after a contract is established, the turnover tax will be calculated according to current government regulations. This only applies to a contract with a customer if the delivery date set in the contract is at least four months after the conclusion of the contract.

11. Method of payment, Billing, Delay in Payment

- 11.1 Payment is on principle due to one of our bank accounts.

- 11.2 Our employees, except our managing director, our chief clerks and our sales staff, are not allowed to take payment with liberating effect, unless it has been explicitly agreed upon for a single case or one of the people involved has been written authorisation from us. This does not apply in the case of cash on delivery.
- 11.3. Payments of the customers will always be applied to the oldest open bill or debt, unless a payment has an explicit offsetting determination or another agreement in a single case. The billing is affected first on possible costs, then on possible interest and lastly on the main claim; insofar a different payment determination by the customer is irrelevant.
- 11.4. If we accept cheques, this only happens as conditional payment. The payment counts as valid, if and when the amount has been credited to our account irrevocably. Possible banking fees and other costs, in particular in case of a failure to pay, are at our customer's expense.
- 11.5. If we accept promissory notes, this only happens as conditional payment. All expenses and costs including the costs of the presentment and any possible protest are to be paid by the customer. We are not responsible to present or protest on time.
- 11.6. Occurrence of default of payment and the resulting consequences of it are determined according to the governmental regulations stated in §§ 286, 287, 288 BGB.
- 11.7. If the customer is in default of payment he owes us for each warning issued a compensation of 3.00 EUR, as far as we can consider the warning relevant.
- 11.8. If the customer is in default of payment we can tie other deliveries and services, also resulting from other contracts, to advanced payments or safety measures of our choice. We also have the right to expose all cessions of our customer to us to his clients and demand immediate payment from his clients to us, as stated in cipher 12.2.. This does not apply if the customer is just in a minor default of payment and if there are no doubts about his liquidity. A default of payment is considered minor if it is maximal 5% of the order volume which the default of payment is based on.

12. Retention of ownership, Cession

- 12.1. All of our delivered goods are to be considered our property until all conditions stated in the contract which is the basis of the transaction are met by the customer, including possible costs, interest and damages caused by delay.
- 12.2. Our property includes plants and produce that the customer has generated through multiplying and blending of the goods that have been delivered by us under retention of ownership.
- 12.3. The customer has the right to resell the goods we have delivered as part of his regular business transactions. In this case he cedes the claims resulting from the resale to us. The amount of this cession is limited to the height of our claims resulting from the

delivery of the resold goods, including possible costs, interest and damages caused by delay. On our request, the customer has to disclose all resales of unpaid goods, name the recipients fully and provide us with all information necessary to collect the ceded claims.

- 12.4. Our customer is required to ensure that the ceded claims do not get lost in balancing through suitable agreements with his buyers, in the framework of what can be is legally permissible. If necessary he has to inform his client about the cession.
- 12.5. Our customer is entitled to collect the claims he ceded to us from his buyers. He is obliged to forward the payment of his buyers to us until the amount of our claims to him is met. If the customer collects his claims from his buyers without forwarding them to us, we are entitled to disclose the cession, including its consequences, to other of his clients, and demand immediate payment.
- 12.6. If third parties, especially during foreclosure and bankruptcy proceedings, want to access the goods that are our property, the customer has to inform them regarding the retention of ownership and present the according documents. He has to inform us immediately. If us protecting our property against alleged foreign claims on our property results in costs, these have to be met by our customer, in case that they are not carried by the third party. Alleged claims against third parties will be ceded step by step to our customer. If the amount of securities granted to us by our customer exceeds 20% of our total claim, we are obliged to release securities that exceed the 20% when requested by our customer. The securities which will be released are selected by us according to reasonable judgement.

13. Warranty, damages caused by transportation

- 13.1. If our delivered goods have a defect whose cause has been present at the point of ownership transferal from us, the seller, to the customer, we are principally committed to warranty, as far as the defect has become known during the statute of limitations (cipher 13.4.) and has been reported to us.
- 13.2. If the customer resells the by us delivered goods and his buyer or the last buyer in a chain of supply is a consumer as stated in §13 BGB, the customer is able to utilize us as stated in §§ 478, 479 BGB through the supplier recourse. If a valid case of supplier recourse is present, the restrictions concerning warranty stated in our terms and conditions so not apply.
- 13.3. Prerequisite for the supplier recourse is that the goods delivered by us have been sold unchanged through the whole chain of supply to the consumer. The supplier recourse requires that the defect that is present when handing over the goods to the consumer is also classified as a defect between us and our customer.

- 13.4. Warranty claims expire after 12 months. Differing of that, the legal statutes of limitations apply if the customer utilizes us in the framework of the supplier recourse (cipher 13.2 and 13.3).
- 13.5. If the customer violates his duty to examine and his requirement to give notice according to cipher 6., he can lose his warranty rights as stated in cipher 6. If the customer is a merchant, this also applies for the case of supplier recourse as stated in § 377 HGB.
- 13.6. The customer has to report defects that are **not** obvious (hidden defects) immediately after discovery. Defects that are not reported in time cannot generate any warranty claims for the customer.
- 13.7. If the customer indicates defects – according to either cipher 5. or cipher 13.6. – he has to give us the opportunity to inspect the goods ourselves or through an authorized third party. If the customer himself employs a third party, especially an expert, to examine the goods or to document possible defects, then we are only obliged to carry the resulting costs if defects are documented that we carry the responsibility for and if we gave written consent to the employment of the expert. This does not apply if an immediate objective inspection is necessary because of an urgency to collect the evidence and if the customer has not been able not reach us in time.
- 13.8. If the customer takes his warranty rights, we are at first only obliged to improve the defect by either rectifying it or delivering a defect-free article. If we refuse to do so or if we are not able to eliminate the defect, the customer can lower the price or withdraw from the contract.
- 13.9. The customer is obliged to examine the goods upon delivery for damage through transport, depending on the size of the delivery possibly through a sufficient number of samples. If damages through transport are detected, the customer has to document them immediately in a protocol detailing the condition of the goods and the damages through transport. This protocol is to be signed by the transport personnel.
- 13.10. The customer is obliged to report damages through transportation immediately to the carrier, under submission of the protocol (cipher 13.9.) and to inform us of the damages, enclosing the protocol.
- 13.11. We are not liable for damages through transportation, subject to cipher 14., unless the damages have been caused by us or one of our agents intentionally or through gross negligence.

14. Claims for Damages by the Customer

- 14.1. If our customer has claims for damages or for reimbursement of expenses due to defects, which are not excluded through agreements stated above or through cipher 14.2., they will be barred after a 12 month statute of limitations, starting from the date

of delivery or the handing-over. Excluded of this regulation are claims for damages or for reimbursement of expenses according to cipher 14.3.

14.2. Every other claim for damages or reimbursement of expenses, other than the cases stated in cipher 14.3., are excluded no matter the legal background, especially claims based on the injury of duties which result out of contractual relationships.

14.3. Claims for damages of the customer are not excluded respective

a) Damages concerning the injury of life, body or health, which resulted from a negligent breach of duty by us or an intentional or negligent breach of duty of our legal representatives or agents.

b) Other damages resulting from a negligent breach of duty by us or an intentional or negligent breach of duty of our legal representatives or agents.

c) Claims for damages as stated above are not barred after the statute of limitation stated in cipher 14.1. but after the statute of limitations requested through governmental regulations.

15. Consultation, planting- and care instructions

15.1. Consultations are not subject to sale- and delivery contracts. They present only non-binding information, unless they are explicitly declared subject to the contract.

15.2. If we provide planting- and care instructions, especially on delivery boxes, they are to be seen as non-binding information based on general experience. Periodically more or in some cases other measures will be necessary or sensible.

15.3. Our previously mentioned information and instructions do not free our customer from the obligation to plant and care for or further process the delivered goods competently and professionally with the appropriate diligence, especially in regard to plant protection mediums and fertilisers.

16. Warranties

16.1. All our given descriptions of our goods and other information, also in catalogues, prospects and advertisements, are generally only to be seen as descriptions, as long as not specifically stated otherwise. They are no guarantee for the condition of the goods, or that the condition of the goods will stay the same for a specific period of time.

16.2. If we have granted a warranty in contrast to cipher 16.1., than the customer has the legal warranty rights without any exceptions, as long as the defects fall in the area that was guaranteed, meaning a difference in the condition of the goods.

17. Specialties concerning Contracts with Consumers

- 17.1. If the customer is to be considered a consumer according to § 13 BGB, the previously stated regulations apply as well as the subsequent § 18. Following restrictions apply:
- 17.2. The transfer of risk takes also place in the framework of a mail order contract according to the governmental regulation stated in § 446 BGB; cipher 7.2. does not apply.
- 17.3. The regulations stated in ciphers 12.3. to 12.7. do not apply.
- 17.4. The regulations regarding warranty in cipher 13. do not apply. Instead, the governmental regulations apply, but with the restrictions on our warranty as stated in cipher 14.

18. Place of Fulfilment, Place of Jurisdiction, Severance Clause

- 18.1. Place of Fulfilment for all services resulting from contracts between us and the customer is Hörstel; this does not apply if the customer is a consumer.
- 18.2. We operate under German law; this also applies in contracts with customers in other countries. The application of the UN-Sales-Law is excluded.
- 18.3. Place of jurisdiction for all disagreements between us and our customers is Ibbenbüren, unless there is another place of jurisdiction given due to government regulations. This does not apply if the customer is a consumer.
- 18.4. If any clause in these terms and conditions or in any contract between us and the customer should be termed unlawful or unenforceable partly or as a whole, the other clauses of these terms and conditions or the affected contract will continue in effect.
- 18.5. The concerned parties are obliged to come to an agreement substituting the unlawful or unenforceable clause with an alternate clause which is as close as possible the original clause when viewed from an economic standpoint.

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