

## **General Terms and Conditions of Purchase of Agromed Austria GmbH**

### **1. General**

(1) These General Terms and Conditions of Purchase shall be exclusively relevant to all purchase contracts concluded by us. The Vendor accepts them as binding for the present and all future purchase contracts. This shall also apply in the case that a Vendor makes reference to his own terms and conditions. We do not accept any conflicting, deviating or supplementary terms and conditions of the Vendor.

(2) If a framework agreement has been concluded with the Vendor, these General Terms and Conditions of Purchase shall apply both to this framework agreement and the specific order.

(3) Express written agreements (including side agreements, modifications or amendments) made between the Parties in a specific case shall prevail over these Terms and Conditions in any case.

### **2. Delivery / Acceptance / Rights in the case of non-performance**

(1) The agreed delivery period/ acceptance period shall apply. If the Vendor does not fulfil his contractual duties at all or in time, the Purchaser is entitled to rescind the contract and/or to claim damages, including but not limited to recourse for the damage suffered by the Purchaser's customers, after fruitless expiry of a grace period granted to the Vendor of usually five (5) business days, unless such grace period is dispensable according to statutory provisions.

(2) Additional costs incurred by a covering purchase, if any, shall be borne by the Vendor, irrespective of any other liability for damages as defined in Clause 2 (1).

(3) Also in the case that delivery is impeded by events for which the Vendor is not responsible, such as export or import bans or comparable official acts, embargoes, epidemics or war-like disputes (*force majeure*), the Vendor shall be bound by the agreed delivery/ acceptance period and Clause 2 (1) shall apply.

(4) For the avoidance of doubt the following circumstances are no events of *force majeure* as defined in Clause (3): officially ordered measures or restrictions on use of animal feed due to a lack of or limited marketability of the goods or production disruptions, machine breakdown, major damage and other disruptions which occur in the Vendor's organisational and commercial area of responsibility.

### **3. Condition / Quality / Sampling**

(1) Subject to any other agreements the goods delivered must be customary in trade and comply with all statutory requirements, in particular animal feed regulations. Any official ascertainment on the lack of marketability shall be binding on the Parties.

(2) The Purchaser is entitled to take samples. In the case that the goods are resold to third parties samples can be taken on the premises of the Purchaser's customers.

(3) The Vendor shall take and keep a retention sample. At least a sample of around 500 g must be kept in a moistureproof and more or less airtight sealable container (e.g. a Debasafe bag) as a retention sample, which ensures the sample's identity and its unaltered composition. In the case of loose deliveries a retention sample of equally at least 500 g must be taken directly upon loading and kept in a moistureproof and more or less airtight sealable container (e.g. a Debasafe bag) which ensures the sample's identity and its unaltered composition. The Purchaser shall be allowed access to the retention sample of the delivered batch throughout the entire storage life and at least for six (6) months.

### **4. Undesirable substances / Concentrations / Complaints**

(1) Within three (3) months of delivery of the goods to the Purchaser or its customers the Purchaser may order an analysis from an accredited analysis institute. The Purchaser shall notify any complaint about the goods to the Vendor immediately after receipt of the analysis report.

- (2) The Parties agree to be bound by the outcome of the analysis.
- (3) If the result of an analysis as defined in paragraph (1) or of officially ordered analyses shows that the goods are defective, the Vendor shall bear the costs of all analyses.

## **5. Warranty**

- (1) If the goods delivered are defective, which also includes minor defects, the Purchaser is entitled to the warranty rights set forth in the following paragraphs. The burden of proof of non-existence of defects shall be on the Vendor.
- (2) If the goods delivered deviate from the agreed condition and quality or if they contain undesired/prohibited substances and/or contaminations, the Purchaser is even primarily entitled, at his option, to improvement, replacement, a price reduction or rescission of the contract. Subject to other claims, the Purchaser is entitled to demand that the goods delivered be taken back against refund of the purchase price paid and of the costs and interest relating to the goods.
- (3) Apart from the right to return the goods, substitute delivery of goods that are in conformity with the contract may be demanded once. If the Purchaser exercises his right to substitute delivery, the Purchaser shall, to the extent they are still available, make available to the Vendor the goods complained about for the latter to take them back. Unless otherwise agreed, the Vendor shall effect substitute delivery within five (5) business days of the requested to do so. In the case that the goods are resold to third parties replacing may also take place directly on the premises of the Purchaser's customer.
- (4) If substitute delivery is not effected in time as defined in paragraph (3), the Purchaser is entitled to rescind the contract and/or to claim damages instead of performance as defined in Clause 2 (1). The last business day of the five-day period shall be the decisive date.
- (5) If the Vendor is liable for damages by law or contract, he shall, in particular, compensate the Purchaser for damage suffered by the latter due to a legally prescribed or an officially ordered recall of the defective goods or a product (animal feed) manufactured by means of the same.
- (6) If the Purchaser is held liable under a warranty claim in the case that the goods are resold to a third party, the Vendor shall indemnify the Purchaser against any damage suffered as a result thereof. In addition, the Vendor undertakes to treat any warranty claim raised against the Purchaser by a customer of the Purchaser as a warranty claim raised against himself.
- (7) The Purchaser's rights based on defects shall become time-barred after two years. The statutory period of limitation shall commence upon delivery of the goods to the Purchaser or direct delivery to his customers. The Vendor expressly waives a plea of late notification of defects as defined in Section 377 of the Austrian Business Code [*Unternehmensgesetzbuch/UGB*].

## **6. Processing of payments**

- (1) Payment of the purchase price shall be effected against submission of an invoice and presentation of the relevant proof of delivery. Payment shall definitely not become due before the issuing of a proper invoice which possesses the features of invoices required by law. The Purchaser shall be entitled to rights to set off or withhold payments to the extent permitted by law.
- (2) Unless agreed otherwise, invoices shall become due for payment within 30 days of receipt of the invoice by the Purchaser. The Parties agree on a cash discount of 3% for payments made within 14 days.
- (3) The date of the transfer order or payment by the Purchaser shall be decisive for timeliness of the payment.

## **7. Prices**

Unless agreed otherwise, the agreed prices shall be fixed lump-sum prices. Such lump-sum prices shall also cover any expenses of the Vendor and all fees, taxes and charges that may be imposed.

## **8. Right to withhold services**

The Vendor shall have no right to withhold services to be provided by him.

## **9. Data processing**

(1) The Vendor undertakes to process the person-related data sent by the Purchaser in accordance with the currently valid data protection laws, as amended, for the sole purpose of performing the contract and to delete these data promptly when there is no longer any reason justifying the processing

(2) Regarding the Purchasers duties to provide information under data protection law according to Articles 13 and 14 of the General Data Protection Regulation (GDPR), please refer to the data protection statement on the Purchasers website. Upon request, the Vendor will be provided with a copy of this data protection statement at no charge.

## **10. Written form**

Modifications of and/or amendments to the contract or these Terms and Conditions shall be made in writing. This shall also apply to an abolishment of the requirement of written form. No oral side agreements exist.

## **11. Applicable law / Place of jurisdiction**

The contract concluded shall be subject to Austrian law; UN Sales Law and the provisions of private international law (e.g. the Austrian Statute on Private International Law [*IPRG*] and the Rome I Regulation) shall be excluded. All disputes arising out of the transaction concluded and other agreements made in connection therewith shall be settled by the court of law at the place of the Purchaser's registered office.

## **12. Severability clause**

If any provision of these Terms and Conditions or of the specific contracts are or become legally ineffective, invalid and/or void, the validity and/or legal effectiveness of the remaining provisions shall not be affected thereby. A legally ineffective, invalid and/or void provision shall be replaced by a legally effective and valid provision which comes as close as possible to the financial purpose of the legally ineffective, void or invalid provision.