

## **Agromed Austria GmbH**

### **Terms and Conditions of Sale and Delivery**

(Version September 2021)

Unless otherwise agreed in writing, the following Terms and Conditions shall apply to all sales and deliveries of Products by Agromed Austria GmbH. Agromed Austria GmbH will not accept any conflicting general terms and conditions of the Buyer.

#### **1. Order acceptance**

An oral order is only considered accepted upon written order confirmation from Agromed Austria GmbH. The rejection of a written order is to be declared in writing within 14 days of receipt, otherwise it shall be deemed accepted with the date of the order confirmation.

#### **2. Place of performance for delivery**

Unless otherwise agreed by the Parties and via Incoterms in the order, the place of performance for delivery shall be the place of loading at the respective supplying plant where the Products are loaded onto the vehicles used for transport. This shall especially apply in case free delivery has been agreed or in case the Buyer wants the Products to be delivered to a different destination. Any agreement on different times of performance shall not be affected hereof. Agromed Austria GmbH shall neither be liable for the state of the transport vehicles, nor for their timely arrival at the destination.

#### **3. Price**

(1) All prices solely include standard packaging of the Products; the costs for special packaging, loading, transportation and transportation insurance shall be borne by the Buyer, unless otherwise agreed. The Seller may adjust the price in case the Buyer has, after conclusion of the contract, demanded adjustments in delivery date, quantity, packaging or quality of the Products.

(2) Our offers are non-binding and do include an obligation to accept orders.

(3) Changes to orders and/or additional orders shall be invoiced separately.

#### **4. Extension of term**

Should the Buyer suffer any damages due to a delay caused by Agromed Austria GmbH, he shall be entitled to fix a reasonable period for Agromed Austria GmbH to perform the delivery; he can do this in writing, by mail or electronic mail, after the original term has passed. Once the extended period has passed as well, he shall be entitled to withdraw from the contract. The maximum amount and the kind of claim for damages due to withdrawal from a contract shall be limited to the value of the delivery without the cost of freight. If the extension of term is fixed even before the original term has expired, it shall become effective the first business day after the original term has expired. Revoking an extension of term shall be subject to the consent of Agromed Austria GmbH. Any other or extended rights under Buyer's claims due to delays in delivery are excluded.

#### **5. Force Majeure**

(1) Force majeure is an event which is beyond the control of the parties to the contract and could not have been foreseen and which either prevents, significantly hampers or makes uneconomic the performance of the contract or the mutually presupposed use of the subject matter of the contract, such as in particular strike, war, civil war, riot, terrorism, cybercrime, natural disasters or natural events such as e.g. low or high water, ice, storm, lack of energy, transport and customs clearance delays, official decrees, as well as all measures, effects or events in connection with epidemics, epidemics or pandemics (in particular COVID-19) or other comparable cases.

(2) In the event of force majeure, Agromed Austria GmbH is entitled to extend the performance period by the duration of the force majeure and an additional reasonable grace period. Furthermore, Agromed Austria GmbH is entitled to withdraw from the

contract with immediate effect for the duration of the force majeure, irrespective of the extension of the deadline. Provided the Buyer agrees – the Seller can deviate from the values of the guaranteed, contracted feed additives to the extent required by such events. The Seller can also invoice any documented additional costs of orders to replace raw components to the Buyer to the extent agreed by the Parties.

(3) The Buyer may not assert any rights against the Seller from or in connection with this withdrawal from the contract or the extension of the performance period; in particular, claims for damages from any legal title whatsoever are excluded to the extent permitted by law. The Buyer waives the assertion of a possible loss of the basis of the business and related claims.

(4) The aforementioned provisions shall also apply in the event that a force majeure event occurs to manufacturers, suppliers or vicarious agents of Agromed Austria GmbH.

## **6. Special costs**

In case Agromed Austria GmbH incurs any additional costs for purchasing products after signing a contract, it shall be entitled to invoice these costs to the Buyer provided it can prove that such special costs are due to an order of high authority which has consequences impossible for Agromed Austria GmbH to anticipate. In the same way any cost reductions shall apply in favour of the Buyer.

## **7. Weight**

For business transactions agreed free point of loading of the respective supplying plant, the weight determined at the point of dispatch shall be decisive.

## **8. Nature/Quality of Products**

(1) If no special agreements have been made, a wholesome, unspoilt quality reasonably fit for purpose shall be supplied.

(2) Breakage and/or dust/fines – as far as not contained in unusual quantities – shall not be deemed to be a reason for complaints. The same shall apply to any differences in colour and grinding. Changes in the composition of the feed additives are admitted without prior notice to the Buyer, provided they are within the limits guaranteed and agreed or within the provisions of the Animal Nutrition Regulations.

## **9. Complaints and warranty**

(1) For any defective delivery – to the extent that these defects are the result of defective materials or manufacturing – including the failure to meet any expressly guaranteed product specifications, Agromed Austria GmbH shall – with any other rights of claim being excluded – be liable as follows:

(2) Any notice of defects must immediately be given to Agromed Austria GmbH by mail or electronic mail, in no event later than two [2] days after arrival of the Products at their destination (fourteen [14] days for sea transport). Resellers shall forward such notice immediately by electronic mail. The Products must be in their original packaging or - in case of bulk loads - in the silo of the recipient of the Products for Agromed Austria GmbH to inspect them. The Buyer shall be responsible for providing evidence on the defectiveness of the goods at the time of handover.

(3) Notice of defects is excluded for Products that have been sent on, incorporated in or used as material for other goods, destroyed or fed to animals.

(4) Agromed Austria GmbH shall only be liable for any hidden defects unknown to both Parties if such defects are identified within twenty [20] business days after receiving the Products.

(5) The Buyer shall notify Agromed Austria GmbH immediately by mail or electronic mail after he identifies any hidden defects.

(6) Agromed Austria GmbH is entitled to charge the Buyer for transport and travel costs to the agreed place where the defects are to be rectified.

### **10. Claims due to a decrease in quality**

(1) If the Products are not conform to the contract, the Buyer shall be entitled to claim a refund for decreased quality from Agromed Austria GmbH limited to the value of the Products. Nonetheless, he shall receive the Products and pay for them as stipulated in the contract.

(2) Should the decrease in value of the total batch exceed an average of twenty-five [25] percent, the Buyer shall be entitled to request Agromed Austria GmbH to take back the Products delivered and he can claim reimbursement of the price paid for them, plus any costs levied on them but previously accepted by Agromed Austria GmbH, as well as a substitute delivery of Products conforming to the specifications of the contract. The Buyer shall allow Agromed Austria GmbH a reasonable time for such substitute deliveries.

### **11. Payment**

(1) Place of performance for any payment is the place of business of Agromed Austria GmbH or the bank specified: Payment shall be deemed to have been made when the amount transferred has been received at the bank specified by Agromed Austria GmbH.

(2) Setting off the purchase price against counterclaims asserted by the Buyer is excluded, unless the counterclaim has been established by court order or has been accepted by Agromed Austria GmbH.

### **12. Delay in payment**

(1) If the Buyer does not comply with the payment terms, he shall be deemed to be in default of payment.

(2) In case of default of payment, Agromed Austria GmbH is entitled without prejudice to our other rights to take back the goods, equipment, etc. which are subject to our retention of title, without resulting in withdrawal from the contract.

(3) In case of default of payment, Agromed Austria GmbH is entitled to claim interest and compounded interest amounting to 13% per annum with quarterly billing. If any changes occur in the money or capital market which result in a general change of the interest on credits, we are entitled to adjust the agreed interest rate accordingly.

(4) The defaulting Buyer is obligated to refund all procedural and culpably caused non-procedural costs of the appropriate pursuit of the rights of the Seller, such as in particular dunning costs, expenses for the involvement of a debt collection agency, and costs of a lawyer engaged by us, to the extent they are in a reasonable proportion to the amount claimed.

### **13. Retention of title**

(1) Deliveries shall be made subject to retention of title in accordance with § 367 ABGB (Austrian Civil Code) and the following additions.

(2) Agromed Austria GmbH shall remain the owner of the Products until all receivables in connection with the business relation to the Buyer have been paid in full, including any future receivables that might apply.

(3) Buyer's acquisition of title to Products subject to retention of title with the intention to create a new product is excluded. The Buyer shall incorporate or use the Products as material in or for other goods only with the consent of Agromed Austria GmbH. Products incorporated in or used as material for other goods shall serve as a security for Agromed Austria GmbH only in the amount of the value of the Products subject to retention of title. If any of the Products are incorporated in or used as material for other goods not owned by Agromed Austria GmbH, Agromed Austria GmbH shall have a co-ownership title to the resulting new product in the ratio of the value of the Products subject to retention of title to the other goods they were incorporated in or used for as material. The same shall apply to any other new products resulting thereof. As per our Terms and Conditions, such new products shall be deemed to be Products subject to retention of title. The Buyer shall therefore keep them safe for Agromed Austria GmbH.

(4) Any of the Buyer's receivables resulting of reselling Products subject to retention of title shall right away be assigned to Agromed Austria GmbH, whether or not the Products subject to retention of title are sold incorporated in or used as material for other goods,

and whether they are sold to one or to several customers. The receivables assigned shall be used as a security for Agromed Austria GmbH only in the amount of the value of the resold Products subject to retention of title. In the event the Products subject to retention of title are resold with other goods not owned by Agromed Austria GmbH, whether or not they are incorporated in or used as material for other goods, the assignment of the purchase money claim shall be in the amount of the value of the Products subject to retention of title that are object of that purchase contract along with the other goods or part of the object of purchase.

(5) This retention of title shall also be valid if the Buyer has been allowed a time for payment. In this case, however, the Buyer shall be entitled to sell and to deliver the Products in the ordinary course of business even before he has paid for them. The Buyer shall be entitled and authorized to resell or deliver the Products subject to retention of title provided the purchase money claim following such resale passes to Agromed Austria GmbH as specified in item d) above. The Buyer shall have no other rights whatsoever to dispose of the Products subject to retention of title.

(6) In accordance with the above terms and conditions, the retention of title shall remain in force even if individual receivables of Agromed Austria GmbH are applied to a current account and if the balance has been established and accepted.

(7) Agromed Austria GmbH's retention of title is based on the condition that the title to such Products subject to retention of title shall pass to the Buyer without any further notice and the Buyer shall be entitled to receive all receivables assigned when payment in full of all of Agromed Austria GmbH's receivables under the business relation has been made. Agromed Austria GmbH shall undertake - at its choice - to release any securities it is entitled to according to the above provisions, provided their value exceeds the receivables to be secured by 25%, and provided that - except in cases of delivery under a real current account relation - a release shall only be required for such deliveries or their substitute values that have been paid in full. The Buyer shall have to insure the Products for his own or another's account.

#### **14. Liability**

(1) As far as legally permissible, the liability of Agromed Austria GmbH is limited to damages caused by gross negligence or intent which arise to the object of delivery itself. Agromed Austria GmbH is therefore not obliged to pay damages to the Buyer for damage items which are not objects of the contract, for loss of profits or for any other consequential damages however caused. The liability of Agromed Austria GmbH shall generally be limited to the typical, foreseeable damage howsoever caused. Damages claims expire as far as legally permissible after six [6] months from notification of the damages and damaging party, but in any case after one [1] year from passing of risk.

(2) The Buyer shall inform the Seller immediately on any loss he becomes aware of which results from an object delivered by Agromed Austria GmbH, in particular if the Buyer is requested by a third party under product liability to compensate any damage or notify his suppliers, otherwise becomes aware of a product defect of our goods or is damaged himself.

(3) The assertion of liability, information or recourse claims shall be addressed in writing to the management, providing details on the damage, the facts giving rise to liability including the proof that the deliveries and services were provided by Agromed Austria.

(4) Unless agreed otherwise, loading is not included in the contractual obligation to provide indemnification. Only the Buyer is responsible for load securing and load security.

#### **15. Other rights**

All of the Buyer's rights with regard to Agromed Austria GmbH are fully detailed in these Terms and Conditions. He shall have no other rights, especially with regard to cancellation, termination of contract or compensation of damages. This shall also be valid for any indirect damages, for any breach of an incidental obligation under the contract and for any failure to provide substitute deliveries.

**16. Limitation of claim**

Any limitation of claim shall apply in accordance with statutory regulations only.

**17. Data Protection and Advertising**

(1) The Buyer undertakes to process the person-related data sent by Agromed Austria GmbH 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 duties of Agromed Austria GmbH 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 website of Agromed Austria GmbH. Upon request, the Buyer will be provided with a copy of this data protection statement at no charge.

**18. Oral agreements**

Oral agreements shall be invalid if Agromed Austria GmbH does not immediately confirm them in writing.

**19. Place of jurisdiction and choice of law**

(1) Only the court having competence for Agromed Austria's place of business shall have jurisdiction for all disputes arising directly or indirectly from any transaction.

(2) Unless otherwise specified in special contracts and agreements, Austrian law applies exclusively, under the express exclusion of the UN Sales Convention and international conflict of law provisions.

**20. 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.