

# **General Terms & Conditions of Delivery and Sale of Kwizda Agro GmbH for the agricultural sector**

(valid from 15.02.2017)

## **1. Scope of application:**

These General Terms & Conditions of Delivery and Sale (“GT&C”) apply without reservation to all transactions – regardless of the form in which they were concluded – in the agricultural sector where we act as the Seller. Conditions (in particular General Terms & Conditions) of the Buyer that have not been accepted by us in writing, shall not become part of the contract even if they are compatible with our conditions; nor shall they become so if we accept such conditions of the Buyer without contradiction. Actions performed by us to fulfil the contract shall also not be deemed as acceptance of such conditions that differ from these GT&C. Agreements differing from or supplementing these GT&C must be made in writing and apply solely to the relevant legal transaction, but not to follow-up transactions.

## **2. Amendments to the GT&C:**

Amendments to these GT&C are considered to have been approved and also apply to existing contracts if the Buyer does not raise an objection within one month after transmission or announcement of the amended GT&C. Transmission or announcement of the amended GT&C can also be made digitally (by e-mail).

## **3. Conclusion of contract:**

The offer of a contract (instruction, order) of a Buyer – irrespective of the form – requires written confirmation by us; however, we are entitled in principle to fulfil buyers’ orders without prior confirmation of the order. All of our offers are subject to change without notice and are only legally binding if they are made in writing or – in the case of a verbal offer – confirmed in writing.

## **4. Prices:**

The prices quoted by us are subject to change without notice, irrespective of the Buyer’s contractual obligations. We are entitled to invoice the prices that are valid at the time we deliver.

## **5. Delivery and transfer of risk:**

We do not conclude contracts of sale with a net sale price below €70. Order units are the relevant shipping boxes given in our price list or individual bulk containers. We are entitled to make partial deliveries, to offset these and the Buyer is required to accept such partial deliveries. If a particular delivery date has not been set, the goods must be accepted promptly; however, this does not mean that we are obliged to deliver promptly. The dates given for deliveries and deadlines are – unless otherwise expressly agreed – not binding and are only valid subject to unrestricted transport availability. Claims for compensation due to deadlines being exceeded and penalties (for breach of contract) due to late delivery are excluded. Irrespective of other claims, if goods are not accepted within the agreed delivery dates we are entitled to withdraw from the contract regarding the amount not delivered without setting or granting a grace period. Force majeure: If we are prevented from fulfilling our obligations due to the occurrence of unforeseeable circumstances, which we were unable to avert despite reasonable care in view of the circumstances, e.g. strike, fire, natural disaster, disruption of communication lines, official decree, etc., we shall not be liable for these obligations for the duration of the hindrance. We shall inform the Buyer without delay. In the case of

a shortage of goods we have the option to extend delivery dates or to withdraw fully or partially from the contract, without the Buyer being entitled to assert claims of any nature whatsoever against us. The transport of deliveries with a net invoiced amount below €2,000 shall always be charged to the Buyer's account. Orders below this minimum order value shall be invoiced with a handling charge of €25. Only orders above a net invoice value of €2,000 shall be delivered carriage paid to the delivery address of the wholesaler's warehouse. Risk of accidental loss and accidental deterioration of the goods shall be transferred to the Buyer on handover of the goods, unless transport is undertaken by our company. In the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods shall be transferred to the Buyer on handover of the goods to the haulier, the freight carrier or the person or organisation otherwise commissioned to effect shipment. In the case of express or fast goods shipments, the freight costs shall always be charged to the Buyer's account, irrespective of the amount of the invoice.

#### 6. Exclusion of commission-based transactions, returns and exchanges:

We do not conclude commission-based transactions. Goods sold and empty packaging will not be taken back or exchanged.

#### 7. Payment:

Payment by the Buyer shall be made within 30 days of the date of invoice without any deductions. Cheques and bills of exchange will only be accepted as payment after a separate written agreement has been made. Only the full and irreversible cashing of a cheque or bill of exchange shall be considered as payment. The Buyer is required to reimburse us for all bill of exchange charges and discount interest. Only our company directors entered in the Companies Register and officers with statutory authority and persons with written authority to collect are authorised to accept monies. Without prejudice to all other rights, in the case of late payment by the Buyer we are entitled to choose to apply interest on late payments to the amount of 14% p.a. or at the rate of our bank's base rate at the time. If the Buyer does not comply with their payment obligations or if the Buyer's financial situation should deteriorate, we are entitled, amongst other measures, to refuse further deliveries and also to withdraw from the contract, without setting or granting a grace period. This also applies if a settlement or insolvency procedure is opened over the assets of the Buyer. If the Buyer is insolvent, all of our accounts receivable shall become due immediately. Our right to withdraw from the contract in accordance with Art. 918 of the Austrian Civil Code (ABGB) also applies, in addition to the other legal options, after transfer of the goods and deferment of payment of the purchase price.

#### 8. Storage and resale:

Upon acceptance of the goods the Buyer undertakes to store, transport or dispose of the goods in accordance with legal regulations and our advice. All goods sold by us in the original packaging must be resold in the original envelope (= original packaging unit) immediately enclosing the goods – with the exclusion of all claims whatsoever against us irrespective of their nature. Only goods which are designated for resale in partial quantities at the outset in accordance with the terms of the contract, can be resold in packaging other than the original envelope (= original packaging unit). In any case, the Buyer is required to inform their customers of all legal regulations applicable in connection with the goods and of all advice given by us (also in product leaflets and in the form of instructions for use); if this obligation to inform is breached, that alone excludes any claims whatsoever of the Buyer against us. Should, contrary to expectations, the Buyer's customer be able to lodge a claim against us, if this obligation to inform has been violated by the Buyer vis-à-vis their customers, then the

Buyer is required to fully indemnify and hold us harmless from and against the same. All packaging is licensed and all obligations under the packaging ordinance are covered by our partners.

#### 9. Warranty, compensation, inspection and notice of defects:

Any notices of defect regarding obvious defects and notifications of discernible faults must be made promptly in writing by the Buyer, at the latest within three days from acceptance of the goods – also if agreed properties are missing – (in the case of partial delivery the deadline is counted from acceptance of the corresponding partial delivery), stating exactly the defect, by fax or e-mail. Latent defects shall be notified within three days from their discovery, as described above. The date of written notification of a defect shall be determined by the date of receipt by us. Should the date be exceeded, the goods shall be considered as accepted and any warranty and compensation claims and claims due to error shall expire. The same applies in the case of use, shipping, handling and storage that is improper or contrary to our advice. The warranty period is 1 year from delivery of the goods. In so far as any claims of the Buyer have not expired, our warranty obligations are limited to improvement or replacement, at our discretion, of any defective goods, to the exclusion of all other warranty claims; such goods shall be returned to us for this purpose carriage paid by the Buyer. Should we acknowledge warranty claims, issue an undertaking arising from our warranty, or carry out actions to fulfil our warranty obligations, neither the original warranty period shall be interrupted or extended, nor shall a new warranty period begin. Nor shall this entitle the Buyer to a new claim for performance. Should we – without the Buyer being entitled (any longer) to a warranty claim – perform a service free of charge and contrary to expectations, such services shall be considered as an act of goodwill and the Buyer may not derive any claims whatsoever from this. Should we have given the Buyer leaflets or samples, these are not included in the terms of the contract, unless this has been expressly agreed by us in writing. However, even in the latter case, minor deviations of the delivered goods vis-à-vis contents of a leaflet or sample shall be permitted. Erroneous declarations on our part shall not be binding on us even if the error should not obviously have been noticed by us. Undertakings by independent contractors or agents require written confirmation by one of our company directors entered in the Companies Register or officers with statutory authority for the undertaking to be valid, unless written authority has been given by us.

We shall not be liable for any mixtures with other products not expressly recommended in individual cases, since we are not able to examine all potential mixtures. Many factors, in particular local effects, e.g. weather and soil conditions, types of plant, resistance, spraying method, can result in our product not having the complete desired effect or causing damage to the crop being treated. We shall not be liable for such consequences.

Processing activities performed by us, such as applying pill casings or incrustation of seeds or creating premixes, are carried out in accordance with our standardised processing procedures. We shall not be liable for the quality of seed provided by the Client for processing. We do not carry out suitability tests on seed provided by the Client for processing. The selection of the plant protection product used is made by the Client and is their sole responsibility.

Our liability is limited to damage caused by wilful intention or negligence, whereby proof of qualified responsibility is to be provided by the Buyer/Client. In any case, liability for loss of profits and for consequential damage is excluded. Any claims of the Buyer/Client are limited to the respective net order value. The period for the enforcement of claims of the Buyer/Client in a court of law is limited to one year.

#### 10. Retention of title and prohibition on assignment:

Until the agreed price for the goods has been paid in full, including all ancillary liabilities (e.g. interest, fees) the goods shall remain our property. The Buyer may resell the goods in the proper course of business. However, until full payment of the purchase price due to us including all ancillary liability has been made, the Buyer may not pledge or assign the goods by way of collateral or by any other means to a third party or transfer the goods to a third party free of charge. If the goods are to be distrained, the Buyer is required to inform us of the fact immediately in writing. If the goods are resold to a third party before full payment of the purchase price due to us, including all ancillary liability, has been received, the Buyer herewith immediately transfers their claim for the purchase price, including all ancillary liability, to us to safeguard our claim to the purchase price including all ancillary liabilities. The Buyer is required to note in their account books next to the claim vis-à-vis the Client that this claim has been ceded to us by way of security. We are entitled to check that this note has been made. All payments made by the Client directly to the Buyer as capital payment and ancillary fees for the accounts receivable subject to assignment for security shall be considered to have been entrusted to the Buyer acting in fiduciary capacity for us. Such sums accruing to the Buyer shall be transferred immediately by the Buyer to one of our bank accounts – without merging them with the Buyer's own assets. If the Buyer receives cheques or bills of exchange for the accounts receivable subject to assignment for security, the Buyer shall send these bills of exchange or cheques immediately to us – with the corresponding endorsement, insofar as these are not bearer cheques. The Buyer may not cede the accounts receivable due to them from third parties arising from the resale of the goods, including ancillary liabilities, to other persons than ourselves, neither in whole nor in part, to pledge them or otherwise dispose of the accounts receivable to the benefit of third parties.

#### 11. Exclusion of the right of set-off, right to refuse performance, right of retention:

The Buyer is not entitled to refuse to offset any claims due to them against our accounts receivable or against payment of our account receivable due to their own claims. This also applies if the Buyer should have warranty claims against us. Hence the Buyer is not entitled either to make use of the provisions of Art 1052 of the Austrian Civil Code (ABGB). Furthermore, the Buyer is not entitled to exercise the right of retention of any nature whatsoever over goods owned by us. It is herewith stated clearly that our right to offset remains unaffected.

#### 12. Data privacy, consent and email advertising:

The Buyer herewith gives consent for us to store and process automatically the data transmitted to us.

The Buyer is required to provide us with address changes for service as long as the legal transaction covered by the contract has not been fulfilled by both parties. If such notification is not given, declarations shall also be deemed to have been received if they are sent to the last known address of the Buyer.

The Buyer consents to receive a reasonable amount of information by email. The Buyer can withdraw this consent at any time in writing by fax or by email.

#### 13. Choice of law, place of performance, place of jurisdiction:

Austrian law applies exclusively, excluding the UN Convention on Contracts for the International Sale of Goods and national and international rules for conflict of laws.

Unless otherwise agreed in writing, the place of performance for the goods and services to be provided for the Buyer by us is Vienna. The exclusive place of jurisdiction for both parts, for any

disputes whatsoever arising from and in connection with contracts of sale concluded with us, is Vienna.

Should individual provisions of these GT&C be void, ineffective or contestable, the remaining provisions shall remain unaffected. Legally ineffective or unenforceable provisions shall be replaced by valid and enforceable provisions in accordance with the meaning and purpose of these Terms and Conditions, with financial effects that come as close as legally possible to the legally ineffective or unenforceable provisions. This also applies to any loopholes in the contract.